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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The protection of human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General**

Summary

The present report is submitted pursuant to General Assembly resolution 62/159, in which the Assembly requested the Secretary-General to report to it at its sixty-third session on the implementation of the resolution. The report reaffirms the obligation and responsibility of States to protect internationally recognized fundamental rights that could be infringed while countering terrorism. It examines States' practice in protecting non-derogable rights, in particular the right to life and the absolute prohibition of torture and ill-treatment, as well as obligations concerning the transfer of persons suspected of engagement in terrorist activities or deemed to be a threat to national security. The report also examines States' practice to protect human rights and the limitations placed on the exercise of fundamental freedoms and human rights in the context of counter-terrorism, particularly freedom of expression, and considers the impact on the right to a fair trial. The report draws a number of specific conclusions and recommendations directed to Member States.

* A/63/150 and Corr.1.

** The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. In its resolution 62/159 of 18 December 2007, on the protection of human rights and fundamental freedoms while countering terrorism, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. It further reaffirmed the obligation of States to respect certain rights as non-derogable in any circumstances and recalled that any measures derogating from the provisions of the International Covenant on Civil and Political Rights (see General Assembly resolution 2200 A (XXI), annex) must be in accordance with the prescribed limitative conditions, and underlined the exceptional and temporary nature of any such derogations.

2. The Assembly called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism.

3. The Assembly encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encouraged them to consider the recommendations of the special procedures and mechanisms of the Human Rights Council and the relevant comments and views of United Nations human rights treaty bodies.

4. The present report is submitted pursuant to paragraph 21 of resolution 62/159, by which the Assembly requested the Secretary-General to report to it at its sixty-third session on the implementation of the resolution.

5. International and regional human rights protection mechanisms have for many years recognized the legitimate security concerns of States and their duty to protect their citizens from terrorist acts. The present report will consider how States are to handle those concerns while respecting their human rights obligations. Through the adoption of the United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288), Member States committed themselves to adopting measures that ensure respect for human rights and the rule of law as the fundamental basis for the fight against terrorism. This position was reaffirmed by the Security Council in its resolution 1624 (2005). In his 2006 report entitled "Uniting against terrorism: recommendations for a global counter-terrorism strategy" (A/60/825), the Secretary-General described human rights as essential to the fulfilment of all aspects of a counter-terrorism strategy and emphasized that effective counter-terrorism measures and the protection of human rights were not conflicting goals, but complementary and mutually reinforcing ones. The Charter- and treaty-based bodies of the United Nations human rights machinery have also frequently observed that the lawfulness of counter-terrorism measures depends on their conformity with international human rights law.

6. The General Assembly decided in its resolution 60/251, that the Human Rights Council should undertake a universal periodic review. The Council's Working Group on the Universal Periodic Review conducted reviews of 32 countries. The reports adopted included references and recommendations on issues related to the protection of human rights and fundamental freedoms while countering terrorism. The documentation which provided the basis for the review also included such references.

7. The present report aims to shed light on recent developments in this field, drawing from the jurisprudence of the Human Rights Committee, notably general comment No. 29 on states of emergency, adopted on 24 July 2001; general comment No. 31 on the nature of the general legal obligations imposed on States parties to the Covenant, adopted on 29 March 2004; and general comment No. 32 on the right to equality before courts and tribunals and to a fair trial.[1] It provides an in-depth analysis of key concerns related to States' obligations under international law with respect to the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the freedom of expression and the right to a fair trial, with a view to assisting Member States in discharging their legal obligations in the context of countering terrorism. To this effect, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued its Fact Sheet No. 32, entitled "Human rights, terrorism and counter-terrorism", in July 2008. The publication is addressed to State authorities, national and international non-governmental organizations, national human rights institutions, legal practitioners and others concerned with ensuring the protection and promotion of human rights in the context of terrorism and counter-terrorism. Its aim is to provide a practical tool for practitioners dealing with counter-terrorism and human rights.

8. The report aims to provide information to Member States on their obligations under international human rights law when taking counter-terrorism measures under Security Council resolutions 1373 (2001) and 1624 (2005). By reiterating those obligations, the report also aims to be of use to United Nations-related counter-terrorism mechanisms, such as the Counter-Terrorism Committee and the Counter-Terrorism Executive Directorate in the implementation of the above-mentioned resolutions.

9. The report focuses on the necessity to respect certain rights as non-derogable in any circumstances and underlines the possibility for States to restrict certain human rights while countering terrorism, by derogating or limiting them in strict compliance with legal conditions defined by customary international law and treaty law.

II. States' obligations and responsibilities under international human rights law within the context of counter-terrorism measures

10. States have a duty to respect, protect and fulfil internationally recognized rights and freedoms. Respect for human rights primarily involves not interfering with their enjoyment. Protection is focused on taking positive steps to ensure that others do not interfere with the enjoyment of rights. The fulfilment of human rights requires States to adopt and implement appropriate measures, including legislative, judicial, administrative or educative measures, in order to fulfil their legal obligations. A State party may be found responsible for interference by private persons or entities in the enjoyment of human rights if it has failed to exercise due diligence in protecting against such acts.

11. Article 2 of the International Covenant on Civil and Political Rights defines the scope of the legal obligations undertaken by States parties to the Covenant. It

[1] The general comments of the Human Rights Committee are available at www2.ohchr.org/english/bodies/hrc/comments.htm.

provides that a State party has the obligation to respect and to ensure the rights recognized in the Covenant for all individuals within its territory and subject to its jurisdiction. The latter phrase refers to anyone within the power or effective control of a State even if not situated within its territory, as confirmed by the Human Rights Committee in paragraph 10 of its general comment No. 31 (para. 10). The enjoyment of the rights enshrined in the Covenant is not limited to the citizens of a State party but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers and refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. In its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice has, similarly, concluded that "the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory" (A/ES-10/273 and Corr.1, para. 111).

12. Most human rights derive from conventions and customary law. The body of international law encompasses the rights embodied in international human rights treaties as well as those that have become part of customary international law. Thus, all States are legally bound to respect and protect these rights even though they are not party to a particular treaty. Most of the provisions of the Universal Declaration of Human Rights and of the Covenant are now recognized as customary international law and as such must be respected by all States.

13. Part of the State's international obligations, when adopting counter-terrorism measures, consists of exercising due diligence by taking positive measures to ensure the individual protection against any act committed by private persons or entities that infringes on human rights and fundamental freedoms. International human rights law also places a responsibility on States to provide effective recourse and remedies in the event of such infringement.

III. Derogatory measures: scope and justification

14. Member States are bound to ensure respect for human rights and the rule of law as the fundamental basis in the fight against terrorism. To be effective, this commitment should include the development of national counter-terrorism strategies that seek to prevent acts of terrorism and to address the conditions conducive to their proliferation.

15. Counter-terrorism measures are generally incorporated in national legislations. In exceptional national circumstances, some restrictions on the enjoyment of certain human rights may be permissible under the relevant provisions of international human rights treaties. According to paragraph 6 of general comment No. 31 of the Human Rights Committee, where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of rights in the International Covenant on Civil and Political Rights. The scope of limitation of these restrictions is discussed in the following paragraphs.

16. Ensuring both the promotion and protection of human rights and effective counter-terrorism measures raises serious practical challenges for States. These challenges can be surmounted. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights

law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. The international legal framework of restrictions is specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances, while at the same time providing the conditions of compliance with international obligations and guarantees of respect and protection of fundamental non-derogable rights.

17. Restrictions and limitations do not always apply to the same rights equally. Certain rights may be limited — if the conditions of the limitations are fulfilled — even if they are non-derogable. Other rights may be limited or derogated from depending on the situation. For example, the right to freedom of expression may be limited to proscribe incitement to terrorism or derogated from in the case of declaring a state of emergency.

A. Non-derogable rights

18. In exceptional circumstances, States may take measures to derogate temporarily from a part of their obligations under international human rights provisions. Article 4 of the International Covenant on Civil and Political Rights allows for State parties to unilaterally take measures to derogate temporarily from a part of their obligations under the Covenant in a situation amounting to public emergency which threatens the life of the nation, subject to a specific regime of safeguards (general comment No. 29, paras. 1 and 2). However, in all circumstances States are expected to enact and implement effective domestic legislation and take the required measures in compliance with their international human rights obligations.

19. In practice, many States resort to declaring a state of emergency to avoid the full implementation of human rights. As such, states of emergency become themselves a major challenge to the fulfilment of human rights. The Human Rights Committee has characterized such an emergency as being of an exceptional nature. Not every disturbance or natural catastrophe qualifies as such. Even during an armed conflict, measures to derogate from the Covenant are allowed only if, and to the extent that, the situation constitutes a threat to the life of the nation (general comment No. 29).

20. Article 4 of the International Covenant on Civil and Political Rights, for instance, requires a number of procedural and substantive safeguards regarding a state of public emergency. The situation must amount to a public emergency which threatens the life of the nation; the existence of a state of emergency must be officially proclaimed; the measures adopted must be limited to the extent strictly required by the exigencies of the situation; derogations must not be incompatible with the derogating State's other obligations under international law; and the derogating State must immediately notify other States parties, through the Secretary-General, of the provisions it has derogated from and of the reasons for such measures, as well as of the date when the derogation has ceased to apply.

21. The reasons often asserted by States for declaring a state of emergency are international armed conflicts, civil wars or violent internal unrest, and serious natural or environmental catastrophes. Whether or not a terrorist act or threat establishes such a state of emergency must be assessed on a case-by-case basis.

Usually, acts of terrorism do not impede the application of normal measures and do not threaten the continuance of the organized life of the community. To trigger a state of emergency, an act of terrorism should be of sufficient gravity to threaten the integrity of the State.

22. As stated before, the derogating State may take only such measures as strictly required by the exigencies of the situation. A derogation from the Covenant must be necessary and proportional. This requirement relates to the degree of interference as well as to the territorial and temporal scope of the measure adopted (Fact Sheet No. 32, pp. 26 and 27). In this regard, the predominant objective of a derogating State must be the restoration of a state of normalcy where full respect for the Covenant can again be secured (general comment No. 29, para. 1). Once such an objective is fulfilled the exceptional and temporal measures must be stopped. This implies that the necessity of the state of emergency itself and the derogation measures should regularly be reviewed by independent organs, in particular the legislative and judicial branch (Fact Sheet No. 32, p. 27).

23. Article 4 (1) of the Covenant states that the exceptional measures must not be inconsistent with other obligations under international law, particularly the rules of international humanitarian law and the peremptory norms of international law. Moreover, any derogation of rights in a time of emergency may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

24. Not all human rights set out in international human rights law can be derogated from, even in a time of emergency. Article 4 (2) of the International Covenant on Civil and Political Rights lists the provisions that may not be derogated from even in times of public emergency: the right to life; the prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent; the prohibition of slavery, slave-trade and servitude; the prohibition of imprisonment because of inability to fulfil a contractual obligation; the principle of legality in the field of criminal law;[2] the recognition of everyone as a person before the law; and freedom of thought, conscience and religion.

25. Likewise, derogation measures must be consistent with the State's obligations under international humanitarian law. In this context, the minimum provided for in article 3 of the four Geneva Conventions of 1949 must be respected, in particular, the prohibition, at any time and in any place, of violence to life and person, in particular murder, mutilation, cruel treatment and torture, taking hostages and outrage upon personal dignity against persons taking no active part in hostilities. During armed conflicts, the right to life may be restricted only in accordance with international humanitarian law. In its 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice stated that "[i]n principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities" (A/51/218, annex, para. 25).

[2] The principle of legality refers to the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that were in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty.

26. It is important to note that, in addition to international humanitarian law, international human rights law continues to apply during armed conflict, subject only to certain permissible limitations in accordance with strict requirements contained in international human rights treaties. In this regard, the Human Rights Committee has stated that "both spheres of law are complementary, not mutually exclusive" (general comment No. 31, para. 11).

27. The Human Rights Committee also identified rights and freedoms under customary law that may not be derogated from even if not listed in article 4 (2) of the International Covenant on Civil and Political Rights. These include the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibitions against the taking of hostages, abductions or unacknowledged detention; the international protection of the rights of persons belonging to minorities; the prohibition against the deportation or forcible transfer of population without grounds permitted under international law; and the prohibition against propaganda for war or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence (general comment No. 29, para. 13).

28. In its 2003 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice posited the applicability of human rights law in times of armed conflict, stating that "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the [Covenant]" (A/ES-10/273 and Corr.1, para. 106).

Examples of non-derogable rights

The right to life

29. The key and most important non-derogable right is the right to life, which is protected by article 6 of the International Covenant on Civil and Political Rights. Some of the measures that States have adopted to protect individuals from acts of terrorism have themselves posed grave challenges to this right. They include the use of excessive force, "deliberate" or "targeted" killings to eliminate specific individuals as an alternative to arresting them and bringing them to justice, and "shoot-to-kill" law enforcement policies in response to perceived terrorist threats.

30. However, both international and regional human rights law recognize the right and duty of States to protect those individuals subject to their jurisdiction, in times of peace as well as during armed conflict. In particular, "targeted killings" and "shoot-to-kill" measures are explicit violations of the legal and non-derogable obligation under article 6 of the Covenant, which prohibits all arbitrary deprivation of life. International human rights law permits the use of lethal force only when strictly necessary for self-defence or for the defence of another's life, and when in compliance with the principle of proportionality. States must ensure that officers are aware that there is no legal basis for shooting to kill for any reason other than near certainty that to do otherwise will lead to loss of life.

31. Non-lethal tactics for capture or prevention must always be attempted if feasible. In most circumstances, law enforcement officers must give suspects the opportunity to surrender, and employ a graduated resort to force. The State's legal framework must "strictly control and limit the circumstances" in which law

enforcement officers may resort to lethal force. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[3] adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide valuable guidance in this respect.

32. States are under obligation to clearly spell out policies in guidelines to military commanders in order to avoid tactics that are based on the use of targeted killing. Before contemplating the use of deadly force, they should exhaust all measures to arrest a person suspected of being in the process of committing acts of terror. In complying with international human rights law they are bound to adopt appropriate procedural safeguards when they resort to the use of lethal force. In addition, complaints about the disproportionate use of force should be investigated promptly by an independent body.

33. "Shoot-to-kill" policies, like "targeted killings", pose a deep and enduring threat to human rights. As noted by the Special Rapporteur on extrajudicial, summary or arbitrary executions, "the rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes" (E/CN.4/2006/53, para. 45).

34. States have the responsibility to ensure that the entire range of officials operating in the law enforcement machinery discharge their duties in conformity with the law. Extreme vigilance should be applied by those in a position of authority against all forms of abuse of power, especially arbitrary killings.

35. International humanitarian law contains similar provisions against the "targeted killing" of civilians in the context of an armed conflict. One of the fundamental tenets of international humanitarian law is the principle of distinction between civilians and combatants. The prohibition against the targeting of civilians and civilian objects is a basic rule of customary international law.

36. The imposition of the death penalty in cases of defendants accused of terrorism-related offences continues to be of concern. Within this context, there is a need to be vigilant against violation of fair trial guarantees as stipulated in article 14 of the International Covenant on Civil and Political Rights, particularly the right to be assisted by counsel and the right not to be compelled to confess guilt. In cases of trials leading to the imposition of the death penalty, States must ensure scrupulous respect of fair trial guarantees. The imposition of a sentence of death upon conclusion of a trial in which the provisions of article 14 of the Covenant have not been respected constitutes a violation of the right to life (general comment No. 32, para. 59). The combination of the prospect of an unfair trial and a death sentence might amount to inhumane treatment. General comment No. 29 makes the important observation that where the death penalty is contemplated as a sentence, all rights relating to a fair trial contained in article 14 of the Covenant must be fully respected.

37. The use of torture to extract confessions has resulted in some cases in the death of suspects in custody. States must ensure that all deaths in custody are investigated properly and bring the perpetrators to justice.

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[3] See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.

38. Enforced disappearances often include violations of the right to life, as they place the person outside the protection of the law and in most recorded cases end with the death of the suspect. The International Convention for the Protection of All Persons from Enforced Disappearance (General Assembly resolution 61/177, annex) provides that no one should be subjected to enforced disappearance and that each State party should take appropriate measures to ensure that enforced disappearance constitutes an offence under its criminal law. Internal political instability, or any other public emergency, cannot be invoked to justify enforced disappearances. The Convention affirms the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information. States parties should take specific and effective measures to prevent the disappearance of individuals and establish facilities and procedures for the investigation, by an appropriate impartial body, of all cases of missing and disappeared persons in circumstances which may involve a violation of the right to life, among other rights.

The prohibition of torture, cruel, inhuman and degrading treatment or punishment

39. Some States have adopted policies and methods to combat terrorism that, in effect, circumvent and undermine the absolute prohibition of torture and other inhuman or degrading treatment or punishment. This is the case when torture is used to elicit information from terrorist suspects or when they are subjected to secret and incommunicado detention, prolonged solitary confinement or similar measures aimed at causing stress.

40. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a peremptory norm and is non-derogable. The right to be free from torture may not be subject to any limitation, anywhere, under any circumstances. It does not yield to the threat posed by terrorism or to the alleged danger posed by an individual to the security of a State.

41. The use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited, as is the use in any proceedings of evidence obtained under torture, be it at home or abroad. The use of "secret evidence" put forward by prosecuting and other authorities in judicial proceedings constitutes a violation of the principle of admissibility of evidence extracted by torture, as clearly stated in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[4] Individuals who allege to have been subjected to torture should have their case promptly and impartially investigated and examined by a competent authority and measures should be taken to ensure their protection against ill-treatment or intimidation and degrading treatment as a consequence of their complaint or any evidence given.

42. The use of secret and incommunicado detention, prolonged solitary confinement and similar measures aimed at causing stress may amount to torture, cruel, inhuman or degrading treatment. These measures infringe the protected rights related to the conditions of detentions set forth in the Standard Minimum Rules for the Treatment of Prisoners of 1977, the Basic Principles for the Treatment of Prisoners of 1990 (General Assembly resolution 45/111, annex) and the Body of Principles for the Protection of All Persons under Any Form of Detention or

[4] United Nations, *Treaty Series*, vol. 96, No. 1342.

Imprisonment 1988 (General Assembly resolution 43/173, annex). As under those rights, anyone arrested or detained on criminal charges has the right to be brought promptly before a judge and to be tried within a reasonable amount of time or to be released, the right promptly to challenge the lawfulness of his or her detention before a court and the right to regular access to medical doctors and legal counsel. These procedural guarantees are crucial to ensure compliance with the absolute prohibition of torture.

43. Several international instruments, including the Convention against Torture and the Optional Protocol to the Convention, which entered into force on 22 June 2006, provide for legal and practical measures and safeguards to prevent torture and other inhuman or degrading treatment or punishment. The Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention, plays a key role in ensuring the protection of persons deprived of their liberty through preventive measures, including visits to the places of detention, advising and assisting States parties in the elaboration of preventive mechanisms for the prevention of torture and other inhuman or degrading treatment or punishment. So far 145 States have ratified the Convention and 35 States have ratified the Optional Protocol.

44. Some States have reportedly extradited, expelled, deported or otherwise transferred foreign nationals, some of them asylum-seekers, suspected of terrorism to their country of origin or to other countries where they allegedly face a risk of torture or ill-treatment. These measures are in violation of the principle of non-refoulement, which must be interpreted as the obligation of States not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. This principle is set out or reflected in several legal instruments, such as the 1951 Convention relating to the Status of Refugees, the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance and the Covenant.

45. Under international law, the prohibition of refoulement is absolute if there is a risk of torture or other cruel, inhuman or degrading treatment in the receiving country. This obligation also applies in other cases involving a risk for the liberty and the security of the person, including a risk of arbitrary deprivation of life, undue imposition of the death penalty, enforced disappearance, exposure to a manifestly unfair trial, or a risk of infringement of the right to private and family life or the right to an effective remedy.

46. Respect for the principle of non-refoulement requires transparent procedures in the transfer of detainees, consistent with international human rights law and the rule of law, including the obligation to respect the inherent dignity of a person, the right of everyone to recognition before the law and the right to due process.

47. In the context of counter-terrorism, a number of States have made use of diplomatic assurances, memorandums of understanding and other forms of diplomatic agreements to justify the return or irregular transfer of individuals suspected of terrorist activity to countries where they may face a potential risk of torture or other serious human rights abuses. In the absence of legal guarantees, it is of utmost importance that States abide by the principle of non-refoulement and other protection obligations pertaining to the rights of persons deprived of their liberty.

48. States have a positive obligation to ensure that their territory is not used to transfer persons to places where they are likely to be subjected to torture. Consequently, they should take all practical steps to determine whether foreign movements through their territories involve such practices where there are grounds to believe that there is a real risk of irreparable harm. At a minimum, they should ensure that any transfer of persons from one territory to another is undertaken pursuant to a prescription by law and within the framework of international law. In addition, they should ensure judicial oversight and review before the transfer of any detainee and investigate credible allegations of transfers involving a real risk of torture.

B. Limitations

49. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework, provided a number of conditions are fulfilled.

50. According to the International Covenant on Civil and Political Rights[5] certain rights can be subject to limitation. States may resort to those limitations if necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. However, these limitations are subject to extreme conditions and in order to be lawful they must (a) be necessary in a democratic society, (b) be necessary for public safety or public order and (c) be aimed at a legitimate purpose, namely the protection of public health or morals or the protection of the rights and freedoms of others. The Human Rights Committee has repeatedly emphasized that restrictions must be necessary and proportionate (general comment No. 31, para. 6).

51. Any limitations should also be compatible with the object and purpose of the Covenant and must not be arbitrarily applied. The burden of justifying a limitation on a right guaranteed under the Covenant lies with the State.

52. In order to fully respect their human rights obligations while imposing such limitations, States must respect the principles of equality and non-discrimination.

53. In formulating anti-terrorism laws and regulations, due regard should be given to international legal standards and guarantees. It should be noted that the adoption of any overly vague or broad definition of the term terrorism in domestic legislation could lead to criminalization of conduct that does not constitute terrorism as such (Fact Sheet No. 32, p. 40). There is a danger of such definitions being used as an impediment to the legitimate non-violent and peaceful exercise of fundamental rights and freedoms including group rights, such as labour rights and minority rights, or as a means to limit the expression and capacities of political opposition. States countering terrorism should observe the basic human rights principle of legality, which requires precision in the law and prohibits ex-post facto enforcement of a law or the retroactive criminalization of a conduct. Extrapolation in qualifying criminal offences as "terrorist acts" carries the serious risk of violation of this principle under international criminal law (*nullum crimen, nulla poena sine lege*).

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[5] See, for example, articles 12 (3), 18 (3) and 19 (3) of the Covenant and related details in general comment No. 29.

54. Where a counter-terrorism measure seeks to impose a limitation on a right or freedom, this limitation must be necessary in the pursuit of a legitimate counter-terrorism objective and the impact of the counter-terrorism measure on rights or freedoms must be strictly proportional to the nature of that objective. What is often referred to as "necessary in a democratic society" is an additional safeguard which requires States to demonstrate that the limitations do not impair the democratic functioning of society.

55. Counter-terrorism measures must be rationally connected to the achievement of the pursued objective to meet the principle of necessity. In this regard, it is important to determine how the measure is linked with the countering of an actual or potential threat of terrorism against the State, its contribution to other national interests of the State and its contribution to international and regional frameworks on counter-terrorism.

56. For each of the counter-terrorism measures, States must determine, in relation to restrictions or limitations on the enjoyment of a given right or freedom, whether the impact of the measure on the exercise of that right or freedom is proportional to the objective being pursued by the measure and its potential effectiveness in achieving that objective.

57. The following section deals with the issue of limitation in the context of the right to freedom of expression, a fundamental freedom often affected by security measures enacted in times of national emergency and anti-terrorism policies and strategies.

58. The right to freedom of expression provided for in the International Covenant on Civil and Political Rights covers several aspects, including the freedom to "import information and ideas of all kinds", the freedom to "seek" and "receive" them "regardless of frontiers" and in whatever medium. The exercise of the right to freedom of expression carries with it special duties and responsibilities. The Covenant also provides for restrictions related to the interests of other persons (art. 19, para. 3 (a)) or the community (para. 3 (b)). However, in both cases, those restrictions may not be used to jeopardize the right itself (general comment No. 10, para. 4). Hence, the aforementioned safeguards principles of legality, necessity and proportionality should be fully observed in determining the scope of restrictions imposed on the exercise of the freedom of expression as defined in international human rights law while countering terrorism.

59. In this connection, the proscription of incitement to terrorism could also be considered as an integral part of protection measures to ensure national security and public order through a strict prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[6]

60. Incitement to terrorism is a strategy commonly used by terrorist organizations to further their cause and provoke violent action. In resolution 1624 (2005), the Security Council identified incitement as conduct which is contrary to the purposes and principles of the United Nations and called upon States to adopt measures to prohibit and prevent it.

61. Incitement must be separated from glorification. If the first may be legally prohibited, the second may not. In the context of the fight against terrorism a

[6] See article 20 of the International Covenant on Civil and Political Rights.

troubling trend has been the proscription of the glorification of terrorism, involving statements which may not go so far as to incite or promote the commission of terrorist acts, but nevertheless applaud past acts. While such statements might offend the sensitivities of individual persons and society, particularly the victims of terrorist acts, it is important that vague terms of uncertain scope such as "glorifying" or "promoting" terrorism not be used when restricting expression. Incitement can be understood as a direct call to engage in terrorism, with the intention that this will promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring. In their fight against terrorism and in order to respect the freedom of expression, States should be careful to differentiate the two notions.

62. Finally, for States to comply with international protections of freedom of expression, laws should only allow for the criminal prosecution of direct incitement to terrorism, that is, speech that directly encourages the commission of a crime, is intended to result in criminal action and is likely to result in criminal action.

IV. The right to a fair trial

63. This section focuses on the key aspects of the right to a fair trial, which is often the most affected by counter-terrorism measures. It draws attention to the jurisprudence of the Human Rights Committee, in particular its general comment No. 32 pertaining to article 14 of the International Covenant on Civil and Political Rights on the right to equality before courts and tribunals and to a fair trial. The Committee notes in its general comment that the right to a fair trial and to equality before the courts and tribunals is a key element of human rights protection and serves to safeguard the rule of law by procedural means. A number of counter-terrorism measures adopted by Member States have had a serious impact on due process-related rights for individuals suspected of terrorism. Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective and respect the rule of law.

64. In their fight against terrorism, some States conduct activities infringing on basic standards of fair trial. They have resorted to military or specialized courts or tribunals. In particular, they tried civilians in special tribunals of "faceless judges" composed of anonymous judges. Such courts, even if the identity and status of such judges has been verified by an independent authority, often suffer not only from the fact that the identity and status of the judges is not made known to the accused persons but also from irregularities such as exclusion of the public or even the accused or their representatives from the proceedings; restrictions on the right to a lawyer of their own choice; severe restrictions or denial of the right to communicate with their lawyers, particularly when held incommunicado; threats to the lawyers; inadequate time for preparation of the case; or severe restrictions or denial of the right to summon and examine or have examined witnesses, including prohibitions on cross-examining certain categories of witnesses.

65. The right to equality before the courts and tribunals and to a fair trial, set out in article 14 of the Covenant, is a key element of human rights protection and serves as a procedural means to safeguard the enjoyment of other rights. It aims to ensure the proper administration of justice and to this end guarantees a series of specific rights. States should respect rights guaranteed by article 14, regardless of their legal

traditions and domestic law. Guaranteeing those rights is critical for ensuring that anti-terrorism measures respect the rule of law.

66. According to article 14 (1) of the Covenant, all persons must be equal before the courts and tribunals. This general guarantee must be respected whenever domestic law entrusts a judicial body with a judicial task. It prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. This right guarantees the principle of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination (general comment No. 32, paras. 7 and 8). Article 14 applies to all courts and tribunals whether ordinary or specialized, civilian or military. Its guarantees cannot be limited or modified because of the military or special character of the court concerned.

67. In cases regarding the determination of criminal charges against individuals or of their rights, as well as their obligations in a suit at law, article 14 (1) of the Covenant establishes the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. These requirements are absolute rights that are not subject to any exception.

68. The notion of fair trial includes the guarantee of a fair and, apart from exceptional circumstances, public hearing. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.

69. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, and protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.

70. The requirement of impartiality has two aspects. First, judges must not allow their verdict to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must appear to a reasonable observer to be impartial. States should ensure that such requirements are respected in all cases.

71. The Committee has noted that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to recall that States should take all necessary measures to ensure that such trials take place under conditions which genuinely afford these full guarantees (general comment No. 32, para. 22). Trials of civilians by military or special courts are not prohibited in all cases but should be exceptional, that is, they should be limited to cases where States

can show that resorting to such trials is necessary and justified by objective and serious reasons and where, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials.

72. According to article 14, paragraph 2, of the Covenant, everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. This right, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. States should ensure that all public authorities refrain from prejudging the outcome of a trial. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pretrial detention should never be taken as an indication of guilt and its degree.

73. Persons charged with a criminal offence have a right to a minimum of guarantees in criminal proceedings enshrined in article 14 (3) of the Covenant. It is of great importance, in particular when adopting counter-terrorism measures, that States ensure the respect of such guarantees, including the following:

(a) All accused persons have the right to be informed promptly and in detail of the nature and cause of criminal charges brought against them in a language which they understand;

(b) Accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. States have an obligation to grant reasonable requests for adjournment, in particular when the accused is charged with a serious criminal offence and additional time for preparation of the defence is needed. Lawyers should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter;

(c) Accused have a right to be tried without undue delay. This guarantee relates not only to the time between the formal charging of the accused and the start of a trial, but also the time until the final judgement on appeal;

(d) Accused persons have the right to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of their rights; and to have legal assistance assigned to them in any case where the interests of justice so require and without payment by them if they do not have sufficient means to pay for it;

(e) Accused persons have the right to examine the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. This guarantee does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings;

(f) Accused persons have a right to the free assistance of an interpreter if they cannot understand or speak the language used in the court;

(g) Accused persons have a right not to be compelled to testify against themselves or to confess guilt, in the absence or not of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.

74. As the right to a fair trial is explicitly guaranteed under international humanitarian law during armed conflict, the Human Rights Committee has expressed the opinion that the requirements of a fair trial must also be respected during a state of emergency. To protect non-derogable rights, States must not diminish the right to take proceedings before a court.

V. Conclusions

75. **The United Nations human rights system continues to address the question of the protection of human rights and fundamental freedoms while countering terrorism with a view to assisting Member States in abiding by their international human rights obligations while effectively combating terrorism.**

76. **The United Nations High Commissioner for Human Rights, human rights treaty bodies and various special procedures mandate-holders of the Human Rights Council have all expressed grave concerns regarding extrajudicial killings and summary executions, the alleged use of secret detention centres and the practice of irregular transfers of persons suspected of engagement in terrorist activities in the pursuit of counter-terrorism activities. Serious concerns also have been expressed over the use of diplomatic assurances to justify the return and transfer of suspects to countries where they may face a risk of torture. States must ensure respect for all rights, in particular non-derogable rights such as the right to life and the prohibition of torture. However, when they undertake derogating measures from some other human rights, they are called upon to respect the restrictions prescribed in the Covenant. Derogation measures should be allowed only in exceptional circumstances, and they should be proportional and necessary.**

77. **Member States should reaffirm their commitment to the total prohibition of torture by prohibiting torture and cruel, inhuman or degrading treatment in national law; prosecuting those responsible for torture and ill-treatment; and prohibiting the use of statements extracted under torture, whether the interrogation has taken place at home or abroad. Measures should be taken to ensure the access of monitoring bodies to all prisoners in all places of detention, and to abolish places of secret detention. Further, Member States should abide by the principle of non-refoulement and refrain from returning persons to countries where they may face torture.**

78. **The entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006 is a significant development towards ensuring the protection of detainees around the world. The Optional Protocol strengthens the Convention against Torture by establishing an international Subcommittee on the Prevention of Torture with a mandate to visit places of detention in States parties and requiring States parties to set up national preventive**

mechanisms, which are also to be provided with access to places of detention and prisoners. The adoption by the General Assembly of the International Convention for the Protection of All Persons from Enforced Disappearance is similarly an important step towards further strengthening the rule of law in countering terrorism. Member States are encouraged to ratify and implement the Convention against Torture and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance as an important practical measure of good faith and meaningful commitment to preventing torture, ill-treatment and enforced disappearances.

79. **The Secretary-General calls for added attention to all rights and freedoms described in the present report in the context of ensuring that counter-terrorism measures conform to human rights standards. In his view, States should not need to resort to derogation measures in the area of freedom of expression, assembly and association. Instead, limitation measures, as provided for in the Covenant, are sufficient for an effective fight against terrorism. Such limitations must always be demonstrated to be necessary and proportionate, and subject to judicial safeguards.**

80. **States resorting to military or specialized courts or tribunals in countering terrorism are called upon to accord due attention to the basic standards of fair trial and to the right of equality before the courts in order to ensure a proper administration of justice and respect for the rule of law.**

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Multilingualism

Multilingualism

Report of the Secretary-General

Summary

The present report, which is submitted pursuant to General Assembly resolution 61/266, provides an update on the various activities undertaken to promote multilingualism since the submission of the previous report in this subject (A/61/317).

In fostering diversity and plurality within the United Nations, efforts to promote multilingualism are vital. The current review shows that, through a number of initiatives, progress has been achieved in the promotion of multilingualism in the areas of conference management, internal communications, public information and outreach and human resources management.

The launch of the International Year of Languages in February 2008 presented an additional opportunity to focus on multilingualism. The extensive programme of activities undertaken to mark the Year, which is covered in a separate report, is expected to have a lasting effect and will foster the mainstreaming of language issues in United Nations programmes and internationally.

* A/63/150 and Corr.1.

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I. Introduction

1. The present report is submitted in follow-up to General Assembly resolution 61/266, in which the Assembly requested the Secretary-General to submit to it, at its sixty-third session, a comprehensive report on the implementation of its resolutions on multilingualism. The Assembly also invited the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to report to it on the impact of the activities carried out during the International Year of Languages.

2. During the sixty-second session, the General Assembly considered other subjects related to multilingualism, including budget (resolutions 62/235 A-B and 62/237 A-C), human resources management (62/248), pattern of conferences (62/225) and questions relating to information (62/111 A-B, 62/182). Ensuring parity among the six official languages is a priority for the Secretariat, and 2008, as International Year of Languages, provided the opportunity to give centre stage to the issue of multilingualism.

3. The present report, which provides an update on the various activities undertaken to promote multilingualism since the submission of the previous report on this subject (A/61/317), includes a midterm review of activities organized to mark the International Year of Languages.

II. Multilingualism at the United Nations

A. Coordination of multilingualism

4. In response to the request of the General Assembly in its resolution 61/266, the Secretary-General appointed the Under-Secretary-General for Communications and Public Information as Coordinator for multilingualism on 29 May 2008.

5. The Department of Public Information took on a coordination role and worked with the network of focal points designated in all relevant Departments on issues related to multilingualism.

B. Conference management

1. Conference services

6. **Provision of optimal quality conference management services**: as the entity within the Secretariat entrusted with overall responsibility for ensuring effective communication among Member States, the Department for General Assembly and Conference Management is fully committed to multilingualism as the animating principle of all its policies and services. In providing high quality conference-servicing support to the intergovernmental machinery, the Department is mindful of the need to ensure that all six official languages are given equal treatment, as mandated by the General Assembly.

7. Pursuant to a request by the General Assembly in its resolution 62/225 that the Secretary-General take measures to improve the planning of conference resource allocations with a view to ensuring that the bodies entitled to meet "as required"

receive adequate conference services,[1] as at 1 January 2007, the Department put in place a strategic reserve of three additional meetings per week specifically in order to accommodate such bodies. It is clear from the statistical data on the provision of interpretation services to meetings of regional and other major groupings of Member States (see table 1) that such a reserve is in fact having a positive effect on the ability of the Department to provide such services. However, the provision of services varies greatly by duty station: the overwhelming majority of requests for interpretation services for informal meetings are met at Headquarters. At the other duty stations, response to these requests is a function of the budget allocated for conference services and meetings on the calendar.

Table 1
Statistics on provision of conference services to regional and other major groupings of Member States in New York, Geneva, Nairobi and Vienna

	2007				
	Meetings with interpretation services			*Meetings without interpretation services*	
Grouping	*Requested*	*Provided*	*Not provided*	*Requested*	*Provided*
New York	219	191	28	881	881
Geneva	89	65	24	1 086	888
Vienna	0	0	0	259	259
Nairobi	10	10	0	203	203

Source: A/63/119.

8. **Demographic transition in language services**: in attempting to deal with the ongoing demographic transition brought about by the high number of retirements and the large numbers of new recruits in language positions, the Department has initiated a programme of outreach to universities and other institutions training language specialists and has engaged in an ambitious training venture to prepare serving staff to assume increased responsibilities resulting from the retirement of seasoned language staff.

9. The Department has developed succession planning covering the period 2006-2011 and has devised a schedule of competitive examinations, which are discussed and finalized with the Examinations and Tests Section of the Office of Human Resources Management at annual planning meetings. The Department relies on the ability of the Office of Human Resources Management to conduct competitive examinations to fill its vacant language posts. Limited resources in that Office may have an impact on the Department's work capacity.

10. **Evaluation of the performance of the Department by Member States**: in response to requests by Member States, the Department has developed various tools to elicit the opinions of its clients on the quality of services provided by its staff. A client satisfaction survey was circulated during the sixty-second session of the General Assembly in all six official languages, principally during meetings of the Security Council and the Main Committees of the General Assembly. The 41 per cent

[1] Resolution 62/225, sect. II.A, para. 7.

response rate to that survey was considerably higher than in previous years (13 per cent in 2006; 19 per cent in 2005; and 20 per cent in 2004). According to survey results, Department services were rated excellent or good by 81 per cent, fair by 16 per cent and poor or very poor by less than 3 per cent of respondents. The three main expectations identified were timely issuance of documents, good customer service and good quality of interpretation. The Department continues to explore innovative ways to collect and analyse feedback. A database was developed to collect ad hoc feedback on the quality of services through various means, including by telephone, e-mail, in person or through regular mail.

11. As mandated by the General Assembly, the Department has been holding two rounds of informational meetings every year with Member States at Headquarters and at other duty stations, including at the United Nations Office at Geneva. Such meetings afford Member States an opportunity to discuss a range of issues relating to the implementation of the principle of multilingualism in all areas of the Department and have proven to be a very valuable forum for the staff of the Department to gauge the opinions of delegates and provide them with useful information on the dependencies language staff face in the performance of their duties.

2. Official documentation

12. In addition to the proactive document-management actions proposed to address various impediments to achieving the mandated full compliance with the 10-week and 6-week rules for the issuance of pre-session documents, including limited late slotting and re-slotting, the Department remains committed to enforcing strict compliance with the rule governing simultaneous distribution of documents in the six official languages for all documents of deliberating bodies, with such documents being uploaded on the Official Document System (ODS) and posted, where applicable, only when issued in all six official languages.

13. Progress has been achieved in uploading older United Nations documents to ODS. The retroactive digitization programme for documents earlier than 1993, led by the Dag Hammarskjöld Library of the Department of Public Information, has focused on the Security Council, with the objective of digitizing all major Security Council documents in all six official languages by the end of March 2009. Close cooperation with the Department for General Assembly and Conference Management has increased the speed of digitization and has also prevented duplication of work.

C. Internal communications

14. The Secretariat Intranet, iSeek, is now the primary source of information for United Nations staff at all duty stations. This internal communications tool, which ensures that staff share information and knowledge within and across departments, offices and duty stations, is available in English and French, and video and radio programmes in all official languages are featured on a regular basis.

D. Public information and outreach

15. The mission of the Department of Public Information is to strategically communicate the activities and concerns of the Organization to achieve the greatest possible impact. By partnering with key intermediaries, including the press, non-governmental organizations and educational institutions, the Department raises support for the Organization. To further expand the global audience for its products and activities, the Department uses traditional and new means of communications, including radio, television and the Internet, and engages local populations through its network of United Nations information centres.

1. Press releases

16. During the reporting period, fast, accurate, balanced and comprehensive coverage of intergovernmental meetings and conferences continued to be provided in English and French through press releases, in hard copy and on the website. From July 2006 to June 2008, 8,671 press releases were issued, totalling some 41,600 pages. A higher number of press releases was issued in English, although the number of press releases issued in French also increased.

17. To respond to the interest expressed by Member States in the possibility of expanding the press release service to the other official languages, the Department studied and proposed a range of options, including an overview of the costs involved.

Table 2
Number of press releases pages: 2006-2007

	No. of press release pages 1 July 2006-30 June 2007	*No. of press release pages 1 July 2007-30 June 2008*	*Total*
English	12 475	12 464	24 949
French	8 191	8 470	16 661
Total	**20 666**	**20 934**	

2. Radio and television

18. In its continuing efforts to expand the reach of its multilingual programming, the Department recently contracted a leading audience research organization to provide a list of potential radio partners in 20 countries in Africa and Asia that are transmitting in one or more of the languages in which United Nations Radio's broadcasts are produced. The Department is now contacting potential stations identified by the study to promote the use of its programmes. Distribution to francophone Africa is also under way, targeting 200 private, commercial and community radio stations using the WorldSpace Afristar satellite and the Radio France Internationale OrdiSpace download system.

19. Working consistently to refine formats of its programmes and offer broadcasters more flexibility and convenience, United Nations Radio has begun to shift away from offering exclusively packaged programmes, instead providing frequent short news reports and access to raw audio. This approach has already been effectively used in Spanish, replicating the success of the United Nations Radio

News Service, a United Nations Foundation pilot project that focuses on the North American market, offering short news reports and sound bites to radio stations over the web.

20. A new monthly television programme, 21st Century, provides an opportunity to expand the global audience for United Nations Television. The programme features high-quality human interest stories, easily adaptable to language versions, reflecting some of the most important global issues engaging the United Nations family. The programme is carried by a number of broadcasting companies, including BBC World, TVE (Spain), CCTV, Bhutan Broadcasting Service, Deutsche Welle, DK4 (Denmark), France 24, Kenya Broadcasting Corporation, Namibia Broadcasting Corporation, SABC Africa, Viet Nam Television, TV3 Ghana and the Africa Channel, with many other stations showing interest in the new format.

21. Another popular series, United Nations in Action, is produced in English, French, Russian and Spanish, and broadcast in English in 21 countries, in French in 9 countries, in Russian in 4 countries and in Spanish in 6 countries.

Table 3
United Nations Radio and United Nations Television partnerships

	June 2004 (baseline)		*December 2005 (actual)*		*June 2006 (actual)*		*December 2006 (estimated)*		*December 2007 (estimated)*		*July 2008 (actual)*		*December 2008/2009 (estimates +5%)*	
No. television stations	108		136		138		137		163		173		172	
No. radio stations	160		181		190		199		202		228		213	
Total No. television and radio stations	**268**		**317**		**328**		**336**		**365**		**407**		**384**	
	TV	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**
Africa	8	51	30	47	30	51	44	54	48	60	49	64	51	63
Asia and Pacific	10	10	22	10	27	12	17	13	20	15	22	20	21	16
Europe	20	13	23	17	23	19	19	21	25	25	27	23	27	27
Latin America and Caribbean	8	59	10	66	10	66	8	69	11	72	12	75	12	76
North America	27	15	34	23	29	24	25	24	30	27	30	29	32	29
Western Asia	3	5	16	11	17	11	21	11	25	14	25	14	27	15
Global reach	1	7	1	7	2	7	3	7	4	9	4	9	5	10
Total No. of countries	51	75	61	71	61	71	63	71	65	76	65	76	69	80
Net total No. countries: television and radio (minus overlap)	**98**		**105**		**105**		**104**		**111**		**112**		**116**	

	June 2004 (baseline)		*December 2005 (actual)*		*June 2006 (actual)*		*December 2006 (estimated)*		*December 2007 (estimated)*		*July 2008 (actual)*		*December 2008/2009 (estimates +5%)*	
	TV	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**	**TV**	**Radio**
Arabic	10	12	27	16	27	16	21	16	30	18	30	19	32	20
Chinese	6	11	5	12	5	13	3	13	6	12	6	12	7	13
English	57	35	89	39	90	48	77	51	95	60	100	62	100	64
French	14	42	12	44	14	44	27	44	15	47	19	50	16	49
Russian	10	9	9	10	6	10	3	10	12	12	12	11	13	13
Spanish	11	51	9	60	8	60	5	60	12	66	14	67	13	70
Portuguese										18		25		
Kiswahili												13		

3. The United Nations website

22. Since the inception of the United Nations website 13 years ago, the Department has been striving to achieve parity among official languages on the website. Other content-providing offices also face this challenge.

23. On a daily basis, users from more than 212 countries and territories view an average of 1.3 million pages, a fact that underscores the importance of having a truly multilingual website. Much still needs to be done to achieve language parity, but progress has been made, as demonstrated by the latest statistics. From 2006 to 2007, there was a 12.3 per cent increase in visits to www.un.org, with the strongest growth on non-English sites. The Russian website had the largest increase in page views (58.1 per cent), and the Chinese website the largest increase in visits (36.6 per cent).

Table 4
Increase in the number of visits to the United Nations website (www.un.org) across languages: 2006-2007[a]

	Arabic	*Chinese*	*English[b]*	*French[b]*	*Russian*	*Spanish*	*Total*
Page views							
2006	12 346 648	24 203 023	365 400 934	21 065 351	16 335 047	24 540 017	463 891 020
2007	14 238 905	29 260 282	351 913 503	29 609 049	25 747 562	27 069 156	477 838 460
2007 versus 2006 (Percentage)	+15.3	+20.9	-3.7	+40.6	+57.6	+10.3	+3.0
Visits							
2006	2 445 858	4 085 582	28 737 205	4 596 119	2 919 180	6 605 301	49 389 245
2007	2 626 459	5 498 426	29 872 188	5 659 028	3 796 775	6 972 777	54 425 657
2007 versus 2006 (Percentage)	+7.4	+34.6	+3.9	+23.1	+30.1	+5.6	+10.2

[a] Analysis is based on a common benchmark of zero days for all languages.
[b] Due to a change in methodology by which French press releases are now included in the total statistics for the French site, rather than English, there is a significant increase of French page views and visits, and an offsetting decrease in English totals.

24. As part of its responsibilities in providing project management services for many new and existing sites, the Department, in its daily contact with author offices, always emphasizes that they need to make the content of their websites available in all six official languages. However, as far more pages are available in English and offices are continuingly adding pages in that language, the number of new pages in English is still higher than the number of pages added in the other languages. Progress towards language parity therefore remains a difficult challenge, although in some areas, progress has been steady.

25. For example, out of a total of 12,987 web pages created in 2007 by the Web Services Section, over 2,000 new pages were created in each of the official six languages. The production of both new and updated web pages was helped by pro bono partnerships with academic institutions. Zhejiang University in China provided 400 translated pages in Chinese. Minsk State Linguistic University in Belarus translated 259 pages into Russian. The Spanish website had a very high number of pages updated, partially due to services of volunteers and interns as well as to the work of faculty and students at the University of Salamanca in Spain, which delivered 1,893 translated Spanish pages. Quality of the output improved over time as students working on the translations gained familiarity with United Nations terminology. The Department is continuing its efforts to enlist the support of an institution of higher learning for pro bono translations into Arabic. A similar arrangement for translation into French has not been pursued since many offices and departments produce content in that language. Overall, the process of web-page updating is crucial to keeping the United Nations website timely, although the considerable resources required for the effort make the task of working towards achieving linguistic parity even more difficult.

Table 5
New pages created and pages updated in 2007 by the Web Services Section

	Arabic	*Chinese*	*English*	*French*	*Russian*	*Spanish*[a]
New	2 085	2 568	2 024	2 126	2 101	2 083
Updated	4 525	5 680	5 121	4 642	5 414	10 730

[a] The number of updated pages for the Spanish website is very high because the Spanish Language Unit had the services of a number of volunteers and interns during the course of 2007.

26. Additional cost-neutral ways to extend cooperative arrangements with academic institutions for translation of websites are currently being sought, including various opportunities for financing United Nations internships for student translators such as using scholarships from the Spanish Ministry of Foreign Affairs or the Spanish Ministry of Culture.

27. The availability of official United Nations parliamentary documentation on ODS has also helped make the United Nations website more multilingual. Several major segments of the United Nations website, including those of the General Assembly, the Security Council, the sanctions committees and the Peacebuilding Commission, continually update their pages by posting official United Nations documentation and reports retrieved from ODS. Since links to ODS provide access to documents in all six official languages, this helps to make the United Nations

website a more multilingual experience for users as they search information on the Organization's key areas of work.

28. The General Assembly, in resolution 54/248 E, requested the Secretary-General to ensure that the goal of the equal treatment of the six official languages is taken into account in the course of the continuous development, maintenance and enrichment of United Nations websites. The Department is making every effort, at the planning stage of website development, to draw the attention of heads of offices and departments to their responsibility for making content available in all six official languages, in a timely fashion. One key requirement is the need to allocate funds and make arrangements for quality external translations, without which it may be impossible to deliver website content in all official languages. Full compliance with the goal of website language parity will therefore continue to depend on the availability of funding for quality translations.

29. Users of the United Nations website can access varied multimedia content, including video and audio, in several languages. Webcasting, now available in the language delivered as well as in English, has become an important tool that has enhanced the site's multilingual nature. United Nations webcast gives users around the world live or on demand access to meetings of the Security Council, the General Assembly and other bodies and events, including Headquarters press briefings. In 2007, 16.1 million webcast videos, both live and archived, were viewed, an increase of almost 100 per cent from 8.3 million in 2006. The Department was also instrumental in providing live webcast coverage and on demand access to the workings of the Geneva-based Human Rights Council since its inception in 2006. The Department continues to explore ways to expand its webcast service to meet the demands for multilingualism; sufficient resources would allow it to provide live and on demand webcasts in all six official languages. United Nations Radio programmes on the web are currently available in all six official languages, as well as Kiswahili and Portuguese; they can be accessed in AM radio quality for the public, or high audio quality for broadcasters.

30. The United Nations News Centre portal provides continuing coverage of news in all six official languages. An e-mail news service, available in English and French, provides breaking news stories and reports on developments in the United Nations system to more than 50,000 subscribers around the world. Expansion of this service to the other official languages is pending the acquisition of a new, robust system capable of handling all official languages.

31. The introduction of a web content management system will help the planned implementation of a formal system of web governance, by offering a unified technical infrastructure and a centralized templating mechanism. This will, in turn, simplify content creation, making it easier for Departments and other author offices to publish in all six official languages. An important technological requirement in this context is the need to ensure availability of infrastructure and applications that fully support Latin, non-Latin and bidirectional scripts.

4. United Nations information centres

32. The network of 63 United Nations information centres is key to the Organization's efforts to reach people around the world and share the United Nations story in their own languages. These centres currently have the capacity to

work in 48 languages and have produced information material in over 100 languages. The centres provide local audiences with information about the activities and goals of the Organization using traditional media as well as new information and communications technology. Many centres have formed partnerships with the local broadcast media, as a priority, and several have established ongoing arrangements with local media for a regular newspaper column or page devoted to United Nations issues.

33. Examples below illustrate how the centres reach out to local media in various languages:

(a) The information centre in Asunción arranged for publication of United Nations material in Spanish in major publications, including *ABC Color, Última Hora* and *La Nación*, in their education-related supplement pages;

(b) The information centre in Beirut has an agreement with two Lebanese daily newspapers to provide information material selected by the centre in Arabic for a United Nations supplement page in *Al-Balad* for its Sunday edition, and for a biweekly magazine half-page, "Window on the United Nations", in *Al-Mustaqbal*;

(c) The information centre in Bogotá coordinates a weekly radio programme in Spanish about the work of the United Nations in Colombia. It is broadcast by radio Melodía and two national broadcasters and is disseminated to 730 community radio stations throughout the country, with an estimated audience of 2,500,000 people;

(d) The information centre in Brazzaville regularly provides *UN in Action* programming in French to two television broadcasters in the Congo;

(e) The information centre in Dar es Salaam produces radio programmes in Kiswahili and disseminates them through local radio stations;

(f) The information centre in Mexico City D.F. provides national broadcasters with daily Spanish language news feeds from United Nations Radio and was also instrumental in arranging the broadcasting of *UN in Action* in Spanish on national television in the Dominican Republic (*Antena Latina*, canal 7) with the assistance of the United Nations Association of the Dominican Republic;

(g) The information centre in Moscow has arrangements with *Diplomat*, a Russian-language journal, to publish at least five articles by or interviews with senior United Nations officials and experts each year;

(h) The information centre in Nairobi produces a radio programme in Kiswahili with the Kenya Broadcasting Corporation, which is broadcast daily at primetime, reaching a minimum of nine million listeners;

(i) The information centre in Rio de Janeiro has established a cooperative agreement with Empresa Brasileira de Comunicação, a public broadcasting company, to broadcast United Nations-produced radio programmes in Portuguese as well as the television series *21st Century*.

34. In the latter half of 2007, some 295 media outlets reproduced articles published by the Secretary-General, in large part, through the efforts of the information centres, which translated them into local languages and in placing them in the local media. The article with the highest number of placements, "Why the World has Changed in the United Nations Favour" (June 2007), appeared in 66 media outlets in 41 countries in a total of 21 languages. The second highest-

placement article, on climate change, first published on the opening day of the United Nations Climate Change Conference (December 2007), appeared in 40 countries in a record number of 23 languages. In 2008, articles by the Secretary-General had been published by approximately 250 media outlets as of mid-August. The article that generated the most interest this year, "The Real United Nations" (July 2008), was published by 42 papers in 14 languages. The Secretary-General's call to arms to address the imminent global food crisis in "The New Face of Global Hunger" (March 2008) was published in 41 countries and 14 languages.

35. The United Nations information centres also reach out to wider segments of the public by producing and translating information into local languages. This includes the Department's publications as well as those of the United Nations system and their own locally produced information materials. Among frequently translated publications are: the Charter of the United Nations, the Statute of the International Court of Justice, the Universal Declaration of Human Rights, material on the Millennium Development Goals, *UN in Brief, 60 Ways the United Nations Makes a Difference* and "A Stronger United Nations for a Better World: My Priorities as UN Secretary-General":

(a) Currently, 36 information centres produce their own newsletters/bulletins on a weekly, monthly or quarterly basis. These are produced in 16 local languages, namely: Armenian, Azeri, Bahasa Indonesia, Bangla, Czech, Georgian, Hindi, Japanese, Kiswahili, Portuguese, Romanian, Sinhala, Tamil, Turkish, Ukrainian and Urdu;

(b) The Department's information office in Yerevan showcased its locally produced publications in Armenian during an exhibit in April 2008 in connection with the International Year of Languages. To date, that office has produced more than 90 books, bulletins, booklets and posters with an overall print run of 100,000;

(c) The information centre in Accra has made the Universal Declaration of Human Rights available in 11 Ghanaian languages, Asante Twi, Akwapim Twi, Fanti, Ga, Dangbe, Dagbani, Dagaare, Ewe, Gonja, Nzema and Kasem, all of which are available online.

36. In October 2007, in cooperation with the University of Aquino, the information centre in La Paz organized a model United Nations in the Aymara language. The event, which was attended by indigenous, municipal and education authorities in the region, was fully conducted in Aymara, a language spoken by nearly 25 per cent of the Bolivian population, marking the first time ever that a model United Nations was held in the language of an indigenous people.

Wealth of languages

Over the years, the United Nations information centres have translated and produced United Nations materials in over 100 languages.

Since 2006, UNICs translated and produced materials in the following 48 local languages: Armenian, Azeri, Bahasa Indonesia, Bangla, Czech, Danish, Dioula, Dutch, Finnish, Fulfulde, Georgian, German, Greek, Guarani, Hindi, Hungarian, Icelandic, Italian, Japanese, Joola, Kirundi, Kiswahili, Lingala, Mandika, Moore, Myanmar, Nepali, Norwegian, Persian, Polish, Portuguese, Pulaar, Romanian, Sereer, Sesotho, Shona, Sinhala, Slovak, Slovenian, Soninke, Swedish, Tamil, Thai, Turkish, Ukrainian, Urdu, Uzbek and Wolof.

UNICs maintain websites in the following 30 local languages: Armenian, Azeri, Bahasa Indonesia, Bangla, Belarusian, Brazilian Portuguese, Czech, Danish, Dutch, Finnish, German, Greek, Hindi, Hungarian, Icelandic, Italian, Kiswahili, Japanese, Norwegian, Persian, Polish, Portuguese, Romanian, Slovakian, Slovenian, Swedish, Thai, Turkish, Ukrainian and Urdu.

37. The strengthening of the information centres in Cairo, Mexico City D.F. and Pretoria has led to greater interaction among the centres in those regions. Collective approaches are now taken to specific communications challenges, including: the sharing of tasks such as translation; joint activities to highlight key issues; and assistance in addressing the operational needs and concerns of information centres in neighbouring countries. The centres also lead efforts to bring together regional communications groups to discuss common United Nations communications concerns and opportunities and to develop joint projects.

38. The United Nations information services in Geneva and Vienna and the United Nations Regional Information Centre for Western Europe in Brussels have collaborated in various ways, taking advantage of their respective strengths, information networks and locations. The office in Brussels, has developed, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), a website for the sixtieth anniversary of the Universal Declaration of Human Rights called "Know Your Rights" (http://www.knowyourrights2008.org), launched on Human Rights Day 2007 and available in eight languages (Dutch, English, French, German, Greek, Italian, Portuguese and Spanish). The centre in Brussels produces and translates information about the United Nations in languages other than the official languages of the United Nations and maintains a website in 13 languages. The centre's monthly magazines and newsletters are produced in English, French, Portuguese and German. On a daily basis, the centre provides information materials in Portuguese to all United Nations offices operating in Portuguese-speaking countries, and compiles a press review in English, drawn from 10 local languages. With the generous support of the Government of Belgium, key information material is translated and printed in most of the languages of the region and subtitles are made for United Nations videos.

39. In 2007, in a collaborative project between information technology teams from the Department of Public Information at Headquarters and staff at the centres concerned, 26 websites were developed or revamped for the information centres in developing countries, including 16 in sub-Saharan Africa. All 63 information centres currently have functioning websites offering information in five official languages. The establishment of webmaster positions at key offices in the network — Brussels, Cairo, Mexico City and Pretoria — has further strengthened the Department's virtual team of information technology specialists and its support of websites in local languages.

40. The newly redesigned United Nations information centres website (http://www.un.org/aroundworld/unics), which is to be launched in the fall of 2008, features the publications and other information materials translated by information centres into local languages. Taking advantage of an enhanced translation repository, the new website showcases many translations on a wide variety of

subjects. Translations can be viewed by language, subject, publication or name of information centre. Now available in all six official languages, the site provides links to all newsletters and websites produced by the information centres, including those in local languages, providing a gateway to the work of the centres.

5. Outreach activities

41. The Department has also focused its attention on expanding its partnership with civil society and on innovative ways and means to communicate United Nations messages through non-governmental organizations, educators, students, international celebrities and the private sector.

42. The first annual Department of Public Information/non-governmental organization conference held outside of New York, in Paris from 3 to 5 September, marked the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights. The programme and activities were conducted in English and French. Discussions with Member States are under way to organize upcoming annual conferences in other locations.

43. The United Nations Cyberschoolbus site has developed a number of specific pages, such as the Millennium Development Goal youth site, available in the six official languages. Interactive features, such as the "Ask the Secretary-General" site, allowed students in 89 countries to ask questions in their own language. A German-language version of the website is being developed with the support of the United Nations Association of Austria, with an expected launch in early 2009. In December, the information centre in Mexico City D.F. will organize the first Latin American regional student conference on human rights at the same time as the event at Headquarters. For the first time the conference will be conducted in English and Spanish.

44. National and academic libraries from the network of depository libraries are gradually becoming valuable outreach partners. Regional workshops organized in Spanish (Santo Domingo, February 2007) and in Russian (Saint Petersburg, Russian Federation, June 2008) have helped extend the outreach capacity of the Department.

45. Guided tours are a very popular means of introducing the United Nations to the general public. Online visitors are provided with fact-sheets and briefing notes in the six official languages.

Duty station	*Languages of guided tours*
Geneva	Bulgarian, Chinese, Czech, English, French, German, Italian, Hungarian, Romanian, Russian, Slovak, Spanish and Turkish
New York	Arabic, English, French, German, Hebrew, Korean, Italian, Japanese, Mandarin, Portuguese, Russian, Spanish and Swedish
Vienna	Chinese, Czech, English, French, German, Hungarian, Italian, Russian, Slovak, Polish, Spanish and Ukrainian

E. Human resources

46. To ensure the success of effective multilingualism within the Secretariat, human resources play a key role. Secretariat job vacancies are published in the two working languages via Galaxy, as are instructions and all other tools designed to facilitate the applications of potential candidates. Information on recruitment policy is available on the Organization's website in the six official languages. All vacancy announcements indicate that French and English are the two working languages of the Secretariat.

47. Competitive examinations for language posts are held regularly in the six official languages, in accordance with the needs of the Organization. Regular meetings are held with the Department for General Assembly and Conference Management to ascertain staffing requirements and draw up corresponding schedules of examinations.

1. Language teaching

48. To encourage and enable Secretariat staff to communicate in all the official languages, a language and communications programme is implemented at the main duty stations.

49. In addition to courses taught at three levels (beginners, intermediate and advanced), specialized workshops on presentations, report writing, simulation of intergovernmental meetings, e-correspondence and linguistic and cultural diversity are held regularly in a number of the official languages. Increasingly, dynamic online and distance-learning programmes are being developed to expand the range and methods of language training offered to staff members at the major duty stations and in the field.

50. At Headquarters and at the United Nations Office at Geneva, courses are given in the six official languages; languages offered at the other offices vary according to their location. While Arabic, English, French and Spanish classes are available at all main offices, Chinese and Russian classes are offered according to the level of interest and demand.

51. Information on the courses offered to staff members is available in several official languages on the different websites set up by the respective Staff Development Services. Some offices enter into contracts with external partners for the provision of language lessons. The number of language learners varies according to duty station (see table 6).

Table 6
Language teaching in Secretariat duty stations: 2007 statistics

	Addis Ababa	*Bangkok*	*Beirut*	*Geneva*	*Nairobi*	*New York*	*Santiago*	*Vienna*
English	222	454	22	298	98	283	71	149
Arabic	46	11	8	80	81	295	5	77
Chinese	0	164	0	59	26	240	0	25
Spanish	17	28	11	228	51	521	11	146
French	206	97	23	566	232	760	41	146
Russian	0	21	0	93	0	203	0	33
Total	**491**	**775**	**64**	**1 324**	**488**	**2 302**	**128**	**576**

52. To facilitate greater integration of staff into local life, courses in local languages are offered at some duty stations, for example: Thai in Bangkok; Kiswahili in Nairobi; and German in Vienna.

53. The incentive programme remains in place for staff in both the Professional and higher categories and the General Service and related categories. Career development and mobility policy measures are an added incentive for staff to learn or improve their knowledge of official and working languages, as language skills will be taken into account in their prospects for career advancement.

54. To encourage the practice of multilingualism, certain Governments offer or sponsor linguistic immersion courses (e.g. summer programmes) for Secretariat staff. These courses usually include a language improvement programme and substantive sessions.

Table 7
Internal Secretariat activities marking the International Year of Languages

Date	*Project*	*Description*	*Results*
March-November 2008	Speaking tables	Lunch time event to practice any of the six official languages	Over 300 staff participated between March-June
March 2008	Maslenitsa, Russian festival	A traditional Russian festival	More than 200 staff participated
April 2008	Chinese culture and language festival	Art festival	Over 200 staff learned more about Chinese culture and language
June 2008	Chinese calligraphy exhibition	Calligraphy exhibition and demo, held in cooperation with the Permanent Mission of China	Over 300 staff participated
24-26 June 2008	Simulation globale de réunion Internationale	Intensive French language three-day workshop simulating a United Nations official meeting in French	21 participants carried out a full meeting under United Nations protocols
June-October 2008	How many languages are spoken at United Nations Headquarters?	Informal survey to collect information on minority and national languages spoken by staff at Headquarters	Over 400 staff have taken part to date
July 2008	Arabic calligraphy exhibition	Exhibition and demonstration of Arabic calligraphy with original artefacts from various Arabic countries	About 400 staff took part

Date	*Project*	*Description*	*Results*
August 2008	Headquarters language learning needs survey	To determine language learning needs of United Nations staff and mission staff and assess existing services	Between 2,000 to 3,000 staff expected to participate
September 2008	United Nations multilingual book club	Senior United Nations staff will recommend books on iSeek	
October 2008	Talk series	Prominent scholars, linguists and authors will share their viewpoints on languages and multiculturalism	
November 2008	Learning English through learning about the United Nations	Internet-based, self-learning course open to the United Nations community. Full pilot online course aims to develop advanced language skills and knowledge of United Nations history, staff and work through a 12-unit online course	

2. Peacekeeping operations

55. Selecting and recruiting a sufficient number of qualified candidates with the necessary technical and language skills, particularly French, remains a difficult task, given the number of operations in French-speaking territories. The four-point strategy aimed at recruiting the best candidates for civilian positions in peacekeeping operations continued as described below.

56. A French version of the Galaxy recruitment website for peacekeeping operations provides information on job vacancies in peacekeeping operations.

57. A dedicated unit that screens applications for field positions is staffed by an English, French and Spanish speaking team, able to work in all official languages. Applications are now screened more effectively and efficiently.

58. A more active policy aimed at identifying candidates has been established. Strong partnerships have been built with Member States, non-governmental organizations and universities. Activities to promote recruitment include: meetings with the French-speaking group; sessions with the Canadian Civilian Reserve, the Centre for Information, Counselling and Training (Cinfo) (Switzerland) and the Association des étudiants en sciences politiques (Paris). Targeted recruitment campaigns continued through the posting of vacancies in such periodicals as *Jeune Afrique*, *The Economist* and *The Wall Street Journal Asia*, as well as on websites such as ReliefWeb, where vacancies can be posted in French and English. A small part of the 2006-2007 budget was earmarked for recruitment dr es carried out in French-speaking countries. In an effort to attract Arabic-speaking andidates for the African Union-United Nations Hybrid Operation in Darfur (UN/ MID), the United

Nations Mission in the Sudan (UNMIS) and the United Nations Assistance Mission for Iraq (UNAMI), the Department for Field Support attended a 2007 job fair in Jordan, considered to be the largest in the Middle East. Notes verbales to French and Arabic-speaking Member States are to be sent by the Department in late 2008.

59. The working group established to ensure deployment of a sufficient number of French-speaking military, police and civil agents in peacekeeping operations continued to meet.

60. Language courses in Arabic, English, French, Spanish, as well as Creole, Kiswahili, Lingala and Swahili are offered at peacekeeping missions.

Table 8
Examples of language courses offered in peacekeeping missions

Mission	*Languages taught*	*Eligibility requirements*
United Nations Integrated Office in Burundi	French English Kiswahili	All
United Nations Mission in the Central African Republic and Chad	French English	All
United Nations Stabilization Mission in Haiti	French English Spanish Creole	All
United Nations Organization Mission in the Democratic Republic of the Congo	English French Spanish Lingala Swahili	All, including contingents and formed police units
United Nations Operation in Côte d'Ivoire	English French	All
United Nations Assistance Mission in Afghanistan	English	All
United Nations Assistance Mission for Iraq	Arabic	All
United Nations Disengagement Observer Force	Arabic	All
United Nations Mission in Ethiopia and Eritrea	English French	All (no military)
United Nations Mission in Nepal	No current classes — previously Nepali classes	n/a
United Nations Mission in Liberia	English French Arabic	All

Mission	*Languages taught*	*Eligibility requirements*
United Nations Mission in the Sudan	English Arabic	English for nationals Arabic for others
Office of the United Nations Special Coordinator for the Middle East Peace Process	Arabic	Nationals/Internationals (no United Nations Volunteers/no military)

61. The Integrated Training Service of the Department of Peacekeeping Operations had several meetings with the Organisation internationale de la Francophonie on the use of French in training. The Service has also recruited several French-speaking staff members and five of the six official languages are spoken in the office.

62. The Integrated Training Service has contacted the French Joint Intelligence Service Training Centre in Strasbourg, France, which has agreed to translate general and basic training modules from English into French. This project is in its early stages; the training materials will be translated once latest developments in the doctrine and practices of the Department of Peacekeeping Operations have been finalized. The Integrated Training Service has also published a French-proficiency examination for use as a guide by Member States and Francophone missions. These examinations are designed to assess the knowledge of French of the military observers selected for missions in French-speaking countries.

63. Training in French and English for senior Professional staff of missions was conducted in Nigeria in 2007 for members of the Economic Community of West African States (ECOWAS).

III. Conclusions

64. In fostering diversity and plurality within the United Nations, efforts to promote multilingualism are vital. The current review shows that, through a number of initiatives, progress has been achieved in the promotion of multilingualism in the areas of conference management, internal communications, public information and outreach as well as in human resources management.

65. The Secretariat continues in its commitment to provide the best possible support to Member States, particularly in their deliberative bodies. The principle of equal treatment for the six official languages, as mandated by the General Assembly, is respected.

66. To ensure that the work and values of the Organization are known and understood by the largest audience, the United Nations relies on traditional media as well as modern technology, and has widened the pool of its partners in support of overall communications strategies.

67. The launch of the International Year of Languages in February 2008 presented an additional opportunity to focus on multilingualism. The extensive programme of activities undertaken to mark the Year, which is covered in a separate report, is expected to have a lasting effect and will foster the mainstreaming of language issues in United Nations programmes and internationally.

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Item 65 (b) of the provisional agenda*
Elimination of racism and racial discrimination: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General**

The Secretary-General has the honour to transmit to members of the General Assembly the interim report submitted by Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Assembly resolution 62/220.

* A/63/150 and Corr.1.

** The present report was submitted after the deadline in order to reflect the most recent information.

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Interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report to the General Assembly, the Special Rapporteur outlines his main objectives for the fulfilment of his mandate and describes the activities in which his predecessor participated in the period since the submission of his report to the Assembly at its sixty-second session.

The activities reported upon are categorized as follows: reports submitted by the previous mandate holder at the sixth and seventh sessions of the Human Rights Council; participation in the Africa Regional Preparatory Meeting for the Durban Review Conference; country visits undertaken by the former Special Rapporteur to Lithuania, Latvia, Estonia, the Dominican Republic, Mauritania and the United States of America.

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I. Introduction

1. The present report is submitted by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the General Assembly pursuant to Assembly resolution 62/220, on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action. It is the fifteenth interim report submitted to the Assembly by the Special Rapporteur and the first submitted by the present mandate holder, Githu Muigai, who took up his functions on 1 August 2008, following appointment by the Human Rights Council.

2. The present report gives an overview of the activities carried out under the mandate since the Special Rapporteur's last report to the General Assembly (A/62/306). As such, it makes reference to the main reports, activities and country visits carried out by the preceding mandate holder and to the main objectives of the present mandate holder in the discharge of his mandate.

3. The Special Rapporteur recalls that the General Assembly, in its resolution 62/220, expressed unequivocal condemnation of all forms of racism and racial discrimination, including related acts of racially motivated violence, xenophobia and intolerance, as well as propaganda activities and organizations that attempted to justify or promote racism, racial discrimination, xenophobia and related intolerance in any form.

4. The General Assembly recognized that States should implement and enforce appropriate and effective legislative, judicial, regulatory and administrative measures to prevent and protect against acts of racism, racial discrimination, xenophobia and related intolerance, thereby contributing to the prevention of human rights violations.

5. The General Assembly also recognized that racism, racial discrimination, xenophobia and related intolerance occurred on the grounds of race, colour, descent or national or ethnic origin and that victims could suffer multiple or aggravated forms of discrimination based on other related grounds, such as sex, language, religion, political or other opinion, social origin, property, birth or other status.

6. The General Assembly reaffirmed that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence should be prohibited by law.

7. The General Assembly emphasized that it was the responsibility of States to adopt effective measures to combat criminal acts motivated by racism, racial discrimination, xenophobia and related intolerance, including measures to ensure that such motivations were considered an aggravating factor for the purposes of sentencing, to prevent those crimes from going unpunished and to ensure the rule of law.

8. The General Assembly requested the Special Rapporteur to continue giving particular attention to the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights by national or ethnic, religious and linguistic minorities, immigrant populations, asylum-seekers and refugees.

9. The General Assembly invited Member States to demonstrate greater commitment to fighting racism in sport by conducting educational and awareness-raising activities and by strongly condemning the perpetrators of racist incidents, in cooperation with national and international sports organizations.

10. The present report is submitted pursuant to the aforementioned resolution, whose main provisions are summarized above.

II. Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

11. During its seventh session, the Human Rights Council reviewed the mandate of the Special Rapporteur and adopted Council resolution 7/34. The terms of reference of the mandate are set out in paragraph 2 of the resolution, in which the Council decided:

> "To extend the mandate of the Special Rapporteur for a period of three years, to gather, request, receive and exchange information and communications with all relevant sources, on all issues and alleged violations falling within the purview of his/her mandate, and to investigate and make concrete recommendations, to be implemented at the national, regional and international levels, with a view to preventing and eliminating all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance, focusing, inter alia, on the following issues:
>
> "(a) Incidents of contemporary forms of racism and racial discrimination against Africans and people of African descent, Arabs, Asians and people of Asian descent, migrants, refugees, asylum-seekers, persons belonging to minorities and indigenous peoples, as well as other victims included in the Durban Declaration and Programme of Action;
>
> "(b) Situations where the persistent denial of individuals belonging to different racial and ethnic groups of their recognized human rights, as a result of racial discrimination, constitutes gross and systematic violations of human rights;
>
> "(c) The scourges of anti-Semitism, Christianophobia, Islamophobia in various parts of the world, and racist and violent movements based on racism and discriminatory ideas directed at Arab, African, Christian, Jewish, Muslim and other communities;
>
> "(d) Laws and policies glorifying all historic injustices and fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance and underpinning the persistent and chronic inequalities faced by racial groups in various societies;
>
> "(e) The phenomenon of xenophobia;
>
> "(f) Best practices in the elimination of all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance;
>
> "(g) Follow-up to the implementation of all relevant paragraphs of the Durban Declaration and Programme of Action and the promotion of the

establishment of national, regional and international mechanisms to combat racism, racial discrimination, xenophobia and related intolerance;

"(h) The role of human rights education in promoting tolerance and the elimination of racism, racial discrimination, xenophobia and related intolerance;

"(i) Respect for cultural diversity as a means to prevent racism, racial discrimination, xenophobia and related intolerance;

"(j) Incitement to all forms of hatred, taking into account article 20, paragraph 2, of the International Covenant on Civil and Political Rights, and instances of racially motivated hate speech, including the dissemination of ideas of racial superiority or that incite racial hatred, taking into account article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 19 of the International Covenant on Civil and Political Rights and general comment No. 15 of the Committee on the Elimination of All Forms of Racial Discrimination, which states that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression;

"(k) The sharp increase in the number of political parties and movements, organizations and groups which adopt xenophobic platforms and incite hatred, taking into account the incompatibility of democracy with racism;

"(l) The impact of some counter-terrorism measures on the rise of racism, racial discrimination, xenophobia and related intolerance, including the practice of racial profiling and profiling on the basis of any grounds of discrimination prohibited by international human rights law;

"(m) Institutional racism and racial discrimination;

"(n) The efficiency of the measures taken by Governments to remedy the situation of victims of racism, racial discrimination, xenophobia and related intolerance;

"(o) Impunity for acts of racism, racial discrimination, xenophobia and related intolerance, and maximizing remedies for the victims of these violations."

12. In paragraph 3 of the resolution, the Council requested the Special Rapporteur, in the discharge of his mandate:

"(a) To develop a regular dialogue and discuss areas of possible cooperation with Governments and all relevant actors concerning issues pertaining to his/her mandate, and to provide technical assistance or advisory services at the request of the concerned States;

"(b) To play a role of advocacy and to engage in the mobilization of political will with all relevant actors in States for the elimination of racism, racial discrimination, xenophobia and related intolerance;

"(c) To coordinate, as appropriate, with other relevant bodies and mechanisms of the United Nations;

"(d) To integrate a gender perspective throughout the work of his/her mandate, highlighting women's rights and reporting on women and racism;

"(e) To report regularly to the Council and the General Assembly."

13. In the resolution, the Council requested all Governments to cooperate fully with the Special Rapporteur in the discharge of his/her mandate, including by responding promptly to the Special Rapporteur's communications, including urgent appeals, and by providing the information requested and urged all Governments to seriously consider responding promptly and favourably to the requests of the Special Rapporteur to visit their countries, including follow-up visits.

14. In addition to the International Convention on the Elimination of All Forms of Racial Discrimination, the Durban Declaration and Programme of Action and other relevant international instruments, which continue to provide the normative framework for the mandate, the Special Rapporteur intends to pursue the provisions of Human Rights Council resolution 7/14, on the right to food, as programmatic priorities related to the discharge of his mandate.

III. Main observations

15. In the present report, the current mandate holder, who took up his functions on 1 August 2008, presents his main objectives and his vision for the future of the mandate.

16. The Durban Declaration and Programme of Action, the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international instruments will remain the central normative and intellectual framework for the implementation of the mandate. In this regard, the Special Rapporteur would like to recall the strong emphasis in the Durban Declaration and Programme of Action on victim-orientation in anti-racism policies. This approach will be further strengthened in the discharge of the mandate, in particular in cooperation with civil society organizations, including organizations representing contemporary victims of racism, racial discrimination, xenophobia and related intolerance.

17. The Special Rapporteur further highlights the central importance he attaches to cooperation and engagement with Member States in the implementation of his mandate. Governments are uniquely placed to bring about the necessary changes needed for the elimination of the scourge of racism, racial discrimination, xenophobia and related intolerance. In this regard, the Special Rapporteur will continuously engage with Governments in order to share expertise and advocate the implementation of anti-racism policies while, at the same time, continuing to carry out his key role of monitoring and reporting on human rights violations.

18. The Special Rapporteur also express his strong commitment to cooperate closely with the United Nations agencies, funds and programmes as well as with the different departments of the Secretariat in order to mainstream anti-racism policies and explore common synergies that can be effectively used in the fight against racism. In this regard, he expresses particular interest in cooperating with United Nations peacekeeping operations deployed in contexts where racial or ethnic issues are relevant, the Special Adviser of the Secretary-General on the prevention of genocide, the Department of Political Affairs, the Peacebuilding Commission, the

United Nations High Commissioner for Refugees and the Office for the Coordination of Humanitarian Affairs, among others.

19. In the planning and undertaking of country visits, the Special Rapporteur will take into account the underlying principle that racism is a universal problem of global implications and will therefore consider the importance of achieving geographical balance and of addressing a wide range of situations of concern to his mandate.

20. As the process of organizing the Durban Review Conference unfolds, with the forthcoming substantive session of the Preparatory Committee to be held in October 2008 and the Review Conference in April 2009, the Special Rapporteur is committed to participate actively and to provide a substantive contribution to the review process. In particular, he hopes that revisiting the historical Durban Declaration and Programme of Action will further strengthen the international front against racism and offer yet another relevant normative framework for the discharge of his mandate.

IV. Activities of the Special Rapporteur

21. The Special Rapporteur was entrusted with his mandate on 1 August 2008. In section IV of the present report, he describes his participation in the Africa Regional Preparatory Meeting for the Durban Review Conference held in Abuja from 24 to 26 August 2008. He also describes some of the activities of his predecessor, namely the reports submitted to the Human Rights Council and the country visits undertaken since the drafting of the last report (A/62/306) to the General Assembly.

A. Participation in the Africa Regional Preparatory Meeting for the Durban Review Conference

22. The Special Rapporteur wishes to note his participation at the Africa Regional Preparatory Meeting for the Durban Review Conference held in Abuja from 24 to 26 August 2008.

23. In the speech he delivered at the Meeting, the Special Rapporteur highlighted the importance of the Durban Declaration and Programme of Action to the international normative framework to combat racism, racial discrimination, xenophobia and related intolerance. He further emphasized that many provisions of the Durban Declaration and Programme of Action had yet to be implemented. The Special Rapporteur therefore recommended that each Member State engage in a process of reflection and self-assessment that would underline the main successes and shortcomings in the implementation of the Durban Declaration and Programme of Action.

24. The Special Rapporteur noted the interplay and mutually reinforcing character of poverty and racism. In particular, he recalled that the Durban Declaration and Programme of Action recognized that poverty, marginalization and social exclusion were not only closely associated with racism, racial discrimination, xenophobia and related intolerance, but were further aggravated by those problems. He recommended that efforts to eliminate racism be therefore undertaken in conjunction with policies to eradicate poverty and promote human development.

25. The Special Rapporteur also noted that the Durban Review Conference was a unique opportunity for Member States to express renewed commitment and unrelenting engagement to fight the scourge of racism and to implement the Durban Declaration and Programme of Action.

B. Reports submitted to the Human Rights Council at its sixth and seventh sessions

26. The Special Rapporteur wishes to inform the General Assembly of the reports submitted by his predecessor to the Human Rights Council at its sixth and seventh sessions.

27. At the sixth session of the Human Rights Council, pursuant to resolution 4/9, the former mandate holder submitted a thematic report on the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights (A/HRC/6/6). In that report, the former mandate holder analysed the phenomenon of religious discrimination, including Islamophobia, anti-Semitism, Christianophobia and other forms of religious discrimination.

28. At the seventh session of the Human Rights Council, the former mandate holder submitted his annual report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/7/19). He also submitted a summary of communications transmitted to Governments (A/HRC/7/19/Add.1) and country reports following his visits to Lithuania (A/HRC/7/19/Add.4), Latvia (A/HRC/7/19/Add.3), Estonia (A/HRC/7/19/Add.2) and the Dominican Republic (A/HRC/7/19/Add.5-A/HRC/7/23/Add.3) and a preliminary note on his visit to Mauritania (A/HRC/7/19/Add.6).

C. Field missions

29. The Special Rapporteur wishes to inform the General Assembly of the visits carried out by his predecessor since the submission of his last report (A/62/306) to the Assembly on 24 August 2007.

30. The Special Rapporteur wishes to inform the Assembly that, since taking up his functions on 1 August 2008, he has requested visits to a number of Member States. He hopes that they will respond positively to those requests.

31. The Special Rapporteur notes that the Assembly, in its resolution 62/220, had reiterated its call for all Member States "to cooperate fully with the Special Rapporteur, and ... to consider responding favourably to his requests for visits so as to enable him to fulfil his mandate fully and effectively". He recalls that while reviewing the mandate of the Special Rapporteur in its resolution 7/34, the Human Rights Council urged all Governments to seriously consider responding promptly and favourably to the requests of the Special Rapporteur to visit their countries, including follow-up visits.

1. Mission to Lithuania

32. The former mandate holder visited Lithuania from 16 to 19 September 2007, at the invitation of the Government. He submitted a report on the visit at the seventh session of the Human Rights Council (A/HRC/7/19/Add.4). The former mandate holder held meetings with State authorities and with civil society, representatives of minority communities and victims of racism, racial discrimination, xenophobia and related intolerance.

33. The former mandate holder concluded that there was a solid legal and institutional framework in place to tackle racism and discrimination in Lithuania, but that further steps needed to be taken to ensure the full and complete application of existing legislation. He highlighted the existence of a historical multicultural tradition in Lithuania that would be useful for overcoming the challenges that the country will face in the future. However, he found areas of concern, in particular regarding historical minorities, including people of Russian descent and some vulnerable groups, notably Romas and non-European new migrants. In particular, he noted with concern the profound discrimination faced by the Roma community, in particular in the fields of employment, education and housing. Non-European minorities had also faced growing problems in terms of racist violence and hate speech. Contrary to traditional minorities, which had been present in the country for decades or centuries, the new migrants posed new identity problems that needed to be overcome through the promotion of tolerance and multiculturalism.

34. The former mandate holder also emphasized the important historical moment that Lithuania was currently experiencing. After the restoration of its independence in 1990, Lithuania had started its integration into the globalized world, a process that carried a number of challenges demanding constant vigilance by authorities and civil society alike. The most important challenge for Lithuania, shared by all Baltic States, was to effect a balance between the continuity of its national identity and profound historical roots and the dynamic of a new multicultural identity inherited from its recent history. Another pressing challenge was to prepare its society for the arrival of new waves of non-European migrants bearing different traditions, cultures and religions. That challenge was also an opportunity to enrich Lithuanian society with more diversity, intercultural dialogue and interaction.

2. Mission to Latvia

35. The former mandate holder visited Latvia from 20 to 24 September 2007 at the invitation of the Government, submitting a report at the seventh session of the Human Rights Council (A/HRC/7/19/Add.3). He held meetings with authorities from the executive branch, including the Prime Minister, and the legislative and judicial branches, as well as civil society, representatives of minority communities and victims of racism, racial discrimination, xenophobia and related intolerance.

36. In his conclusions, the former mandate holder highlighted that Latvia had put in place legislation and a number of institutions aimed at tackling racism and discrimination. He further noted that Latvian society had a history of tolerance, multiculturalism and openness to distinct cultures, which could be a major asset in the deployment of efforts to eradicate racism and discrimination in the long term.

37. The former mandate holder found areas of concern, particularly in terms of three generally vulnerable groups and communities, who nonetheless presented

distinct problems. The first group was composed of the ethnic Russians who had immigrated to Latvia during the Soviet occupation, many of whom had yet to acquire Latvian citizenship and were living under the status of non-citizens. The second vulnerable group identified by the former mandate holder was the Roma community, which suffered, as in most European countries, from cultural stigma and socio-economic discrimination and lived under marginalized conditions. Finally, the former mandate holder assessed the situation of a third vulnerable group, composed of non-European migrants who had only recently arrived in the country and who had been subjected to racist violence and hate speech, particularly in the electronic media, mostly from extremist and neo-Nazi groups.

38. As in the other Baltic countries, the former mandate holder noted that in the fight against racism in Latvia, it was important to take into account both the need of the country to reassert the continuity of its national identity — shaken and eroded by occupation but deeply rooted in memory — and the recognition and respect of the rights of all minorities including those resulting from the occupation. He emphasized that the two principles that should guide the process were the respect for historical truth and the non-discrimination of minorities.

3. Mission to Estonia

39. At the invitation of the Government, the former mandate holder visited Estonia from 25 to 28 September 2007. He submitted his report on the visit to the Human Rights Council at its seventh session (A/HRC/7/19/Add.2). The former mandate holder held meetings with authorities from the three branches of Government, including the Prime Minister, as well as representatives of civil society, minority communities and victims of racism, racial discrimination, xenophobia and related intolerance.

40. In his conclusions, the former mandate holder highlighted the political will shown by authorities, including the Prime Minister, to tackle the problems related to racism and racial discrimination in the country, highlighting, however, that it needed to be constantly reinforced and transformed into concrete actions. He also underlined the fact that Estonia had put in place some institutions that had been very sensitive to the issues relevant to his mandate.

41. The former mandate holder also found a number of areas of concern, primarily concerning three distinct communities in Estonia: the Russian-speaking minority, the Roma community and non-European migrants. The main concerns of the Russian-speaking community were directly related to statelessness, which predominantly affected the group, and the country's language policy, which was seen as an attempt to suppress the usage of Russian. Despite its small size, the Roma community in Estonia, as elsewhere in Europe, suffered mostly from structural discrimination, precarious education and marginalization. Lastly, non-European minorities had experienced a surge in racist violence, particularly by extremist groups, and intolerance by some individuals concerning their ethnic, religious and cultural diversity. Although each of these communities faced different types of problems, a truly long-term solution could only be achieved by focusing on the promotion of multiculturalism and respect for diversity.

42. The former mandate holder further highlighted that in the fight against racism, Estonia would have to show political vision, legal vigilance and cultural creativity to develop a long-lasting sense of belonging and living together, which would allow

its different communities to bond. In that process, two main principles should be followed: respect for historical truth; and non-discrimination of minorities. He put forward a number of concrete recommendations for the Government of Estonia and its civil society.

4. Mission to the Dominican Republic

43. From 23 to 29 October 2008, at the invitation of the Government, the former mandate holder visited the Dominican Republic jointly with the independent expert on minority issues. They submitted a report on the visit at the seventh session of the Human Rights Council (A/HRC/7/19/Add.5-A/HRC/7/23/Add.3). The experts had extensive meetings with senior Government representatives, members of the legislative and judiciary branches, non-governmental organizations, community members, academics and students, political parties, media and other institutions and individuals working in the field of minority issues, social inclusion, anti-racism and discrimination. The delegation visited Santo Domingo, Dajabón and the border region with Haiti, Santiago and San Pedro de Macorís.

44. The experts found that there was a profound and entrenched problem of racism and discrimination in Dominican society, generally affecting blacks, in particular such groups as black Dominicans, Dominicans of Haitian descent and Haitians. The dominant perception among most Dominicans was that their mulatto skin tones distinguished them from darker-skinned Dominicans and Haitians.

45. The experts noted that the issue of racism was almost invisible in certain parts of society, in particular among elites who vehemently denied the possibility of the existence of such a phenomenon. They considered that the invisibility might be the reflection or the consequence of several factors: the historical and cultural depth of racism in the whole hemisphere, from slavery and colonization until the present day; the occupation of the Dominican Republic by Haiti and the achievement of independence of the Dominican Republic from Haiti; and the centrality and instrumentalization of the racial factor during the Trujillo regime and its profound impact in Dominican society.

46. While there was no Government policy of racism and no legislation that was on the face of it clearly discriminatory, the experts highlighted the discriminatory impact of certain laws, particularly those relating to migration, civil status and the granting of Dominican citizenship to persons of Haitian heritage born in the Dominican Republic. In particular, Migration Law No. 285-04 presented problems of conflict with the Constitution of the Dominican Republic, retroactivity and discriminatory application.

47. The experts also noted that people of Haitian descent living in the Dominican Republic, constituting a minority group with rights, as elaborated in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, included persons who had lived in the Dominican Republic for decades as well as second and third generations born in the Dominican Republic when it was widely understood that the *jus soli* provision of the Constitution granted them citizenship. People of Haitian descent in all categories were now having their presence questioned, regardless of whether they had been issued official documents in the past. They were experiencing extreme vulnerability, unjustified deportations and racial discrimination and were denied the full enjoyment of their human rights.

48. The experts recommended that the current Migration Law be revised as a matter of urgency to conform to the *jus soli* provisions of the Constitution and that the rights of all persons of Haitian descent must be respected. As a vital step, the experts also urged the recognition of the reality of racism and discrimination and the expression of a strong political will at the highest level, as well as the establishment of a national plan of action against racism, racial discrimination and xenophobia, in consultation with, and inclusive of, all groups within Dominican society. The experts also called for a wide and inclusive debate on issues of racism and discrimination within the country, particularly in regard to those groups, to rebuild confidence across and within communities and promote a sense of belonging.

5. Mission to Mauritania

49. The former mandate holder visited Mauritania from 20 to 24 January 2008 at the invitation of the Government. He submitted a preliminary note on the visit at the seventh session of the Human Rights Council (A/HRC/7/19/Add.6). The visit included the cities of Nouakchott and Rosso. He met both local and national Government representatives, including President Sidi Mohamed Ould Cheikh Abdallahi, Prime Minister Zein Ould Zeidane, ministers and secretaries of State and members of the legislature and the judiciary. He also met representatives of non-governmental organizations, spiritual and religious leaders, political party leaders, intellectuals, journalists and other members of civil society involved in the efforts to eliminate racism and discrimination. The former mandate holder also visited the El-Mina neighbourhood and the Dar Naim prison in Nouakchott, and the Toulel II area near Rosso, where he met with Mauritanian refugees returned from Senegal in the 1990s.

50. The main conclusion of the former mandate holder following the visit was that, while there were no manifestations of legally endorsed or State-approved racism in the country, Mauritanian society had been deeply marked by continuing discriminatory practices of an ethnic and racial nature, rooted in cultural traditions and pervasively present in attitudes and social structures. A number of persistent features of Mauritanian society had given substance and depth to such discrimination over a long period of time, including: the central role of traditional slavery; the cultural and social entrenchment of the caste system; and the use of ethnicity as a political tool, including through language policies that had contributed to the polarization of Mauritanian society and the antagonism of various communities.

51. The former mandate holder highlighted the key challenge of constructing the identity of the Mauritanian nation in the face of the continuing identity tension between its two main and highly polarized groups: Arabs and Africans. Throughout the country's history, the tension had been used politically to favour the Arab dimension in forging the country's official identity. The heavy burden of the historical legacy of discrimination, as reflected in attitudes and social structures, as well as in inter-community relations and perceptions, was a particularly serious obstacle to the eradication of the culture of discrimination and its various manifestations. The burden was reflected in the silence of victims on the subject of their suffering, and their political, economic and social invisibility in political, military, police and security governance structures and in the world of business and the media, a silence and invisibility that had for a long time resulted, inter alia, in

the absence of racial discrimination cases in the courts and the lack of statistical data disaggregated by ethnicity.

52. Finally, the former mandate holder noted the correspondence in Mauritanian society between the map of socio-economic marginalization and the map of ethnic groups and communities, a strong indication of long-term discrimination. He also noted the flaws in the intellectual and ethical strategy aimed at tackling the root cultural causes of discrimination and the lack of practical follow-up to laws, in particular those on slavery. In that regard, he emphasized the importance of taking into account, in parallel to the adoption of the bill making slavery a punishable offence, the profound long-term impact of slavery on sensitivities and behaviour patterns, which manifested itself as a sort of tacit acceptance of relations of servitude. In that connection, he noted the limited benefits of legally freeing slaves who did not have the material or financial means to support themselves and find a place in society.

6. Mission to the United States of America

53. The former mandate holder visited the United States of America from 18 May to 6 June 2008 at the invitation of the Government. The report containing his conclusions and observations on the visit will be submitted at a forthcoming session of the Human Rights Council in 2009.

V. Conclusions and recommendations

54. **The present report outlines the main vision and objectives of the Special Rapporteur for the implementation of his mandate and the key normative instruments that will guide his work.**

55. **In his future reports to the General Assembly and the Human Rights Council, the Special Rapporteur will be able to submit precise conclusions and recommendations to Member States.**

56. **The Special Rapporteur would like to note the request of the Human Rights Council for Member States to cooperate fully with the Special Rapporteur in the discharge of his/her mandate, including by responding promptly to communications, including urgent appeals, and by providing the information requested, and urges all Governments to seriously consider responding promptly and favourably to the requests of the Special Rapporteur to visit their countries, including for follow-up visits.**

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Promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to development

Report of the Secretary-General on the right to development**

I. Introduction

1. In its resolution 62/161 entitled, "The right to development", the General Assembly requested the Secretary-General to bring the resolution to the attention of Member States, United Nations agencies and bodies, specialized agencies, funds and programmes, international development and financial institutions, in particular the Bretton Woods institutions, and non-governmental organizations and to submit a report to the General Assembly at its sixty-third session and an interim report to the Human Rights Council on the implementation of the resolution, including efforts undertaken at the national, regional and international levels in the promotion and realization of the right to development, and invited the Chairperson of the Working Group on the Right to Development to present a verbal update to the Assembly at its sixty-third session.

2. The present report supplements the report of the Secretary-General on the right to development (A/HRC/8/9 of 18 April 2008) submitted to the Human Rights Council at its eighth session in accordance with the above-mentioned resolution and provides information on the ninth session of the Working Group on the Right to Development, including its conclusions and recommendations.

3. In its decision 1998/269, the Economic and Social Council, taking note of Commission on Human Rights resolution 1998/72, endorsed the Commission's recommendation to establish a follow-up mechanism to make further progress towards the realization of the right to development as elaborated in the Declaration on the Right to Development. The mechanism included the establishment of an

* A/63/150 and Corr.1.

** The present report was submitted later than the indicated deadline in order to incorporate the latest available information on the subject matter.

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open-ended Working Group, which has convened nine sessions. At its fifth session, in February 2004, the Working Group on the Right to Development agreed to recommend to the Commission on Human Rights that it establish a high-level task force on the implementation of the right to development, within the framework of the Working Group, in order to assist it in fulfilling its mandate as reflected in paragraph 10 (a) of Commission resolution 1998/7. The task force has convened four sessions since its first session in December 2004.

II. Updated information complementing the report of the Secretary-General submitted to the Human Rights Council at its eighth session

4. The Working Group on the Right to Development convened its ninth session from 18 to 22 August 2008 in Geneva,[1] to consider the report on the fourth session of the high-level task force, held from 7 to 15 January 2008 (A/HRC/8/WG.2/TF.2). At that session, the task force recommended a continued dialogue and follow-up activities with institutional partners on previously selected global development partnerships, such as the Paris Declaration on Aid Effectiveness, the Economic Commission for Africa/Organization for Economic Cooperation and Development-Development Assistance Committee Mutual Review of Development Effectiveness, Cotonou Partnership Agreement and the Africa Peer Review Mechanism. Building upon the assessments of the above-mentioned partnerships, the task force revised the right-to-development criteria for the periodic evaluation of global partnerships for development adopted by the Working Group in 2006 ("criteria"), as an intermediate step towards progressively developing and refining them. The task force also recommended, in the context of additional partnerships for assessment, that priority be given to the region of Latin America and the Caribbean in terms of geographical expansion and to the issues of access to affordable essential drugs, debt relief, and trading and financial systems in terms of thematic expansion.

III. Conclusions and recommendations of the Working Group on the Right to Development

5. **At its ninth session, the Working Group on the Right to Development adopted conclusions and recommendations (see A/HRC/9/17). The Working Group considered the present reordering of the criteria as an intermediate stage and anticipated a significant refinement in phase III, including providing operational sub-criteria.**

6. **The Working Group recommended that the task force improve the criteria in the light of lessons learned from their application and taking into account the Declaration on the Right to Development, other relevant international instruments as well as the views expressed by States in order to submit, at the end of phase III, a revised list of criteria that serve the purposes set out in all relevant provisions of Human Rights Council resolution 4/4. The Working Group also requested the task force to draw on the necessary expertise to (a) make the criteria analytically and methodologically rigorous, (b) provide**

[1] Originally scheduled to take place from 25-29 February 2008.

empirically oriented tools to the implementation of development partnerships, and (c) ensure that they cover Millennium Development Goal 8, including Target 8.A and other aspects not covered thus far by the task force.

7. The Working Group also recommended a workplan for the task force covering 2008 to 2010. In phase II, covering work in 2008, the task force should (a) continue dialogue with the assessed partnerships, (b) give priority to the issue of access to essential medicines (Target 8.E) and conduct a desk review of the work of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property and apply the criteria to the Global Fund on HIV/AIDS, Tuberculosis and Malaria and the Special Programme for Research and Training in Tropical Diseases, with a dialogue with these partnerships focusing on health systems, transfer of technology, and other dimensions relevant to the right to development, and (c) send a formal invitation to MERCOSUR to consider entering into dialogue with the task force on its contributions to the realization of the right to development, subject to an agreement between the parties on the scope of the dialogue. In phase III, covering work in 2009, the Working Group recommended that the task force study issues under debt relief (Target 8.D and 8.B) and transfer of technology (Target 8.F) and engage in a dialogue with the institutions responsible for the Heavily Indebted Poor Countries (HIPC) initiative and the Multilateral Debt Relief (MDRI) initiative, subject to their agreement, and learning from the experience of these institutions how the criteria can be improved. Regarding technology transfer, the Working Group recommended that the task force examine the Clean Development Mechanism and the Development Agenda of the World Intellectual Property Organization.

8. The Working Group also recommended that the task force consolidate its findings and present a revised list of criteria and operational sub-criteria on the right to development and also outline suggestions for further work.

9. Finally, in order to implement the work programme outlined above and keeping the time frame in mind, the Working Group recommended that the Human Rights Council at its ninth session extend the mandate of the task force on the implementation of the right to development until the eleventh session of the Working Group in 2010. The Working Group also recommended that the Human Rights Council extend its mandate until it completes the tasks entrusted to it by the Council in its resolution 4/4.

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in accordance with paragraph 6 of General Assembly resolution 62/222.

* This report was submitted after the deadline so as to include the most recent developments.

08-49469 (E) 011008

Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

In its resolution 1992/58, the Commission on Human Rights established the mandate on the situation of human rights in Myanmar, which was then extended by the Human Rights Council in its decision 1/102 and resolution 5/1.

In March 2008, by its resolution 7/32, the Council extended the mandate for one year. On 26 March 2008, Tomás Ojea Quintana (Argentina) was appointed as the new Special Rapporteur, and he officially assumed the function on 1 May 2008.

Following a request for a visit from 3 to 13 August 2008, on 9 July the Special Rapporteur received a positive response from the Government of Myanmar to undertake a mission to that country from 3 to 7 August 2008. The Special Rapporteur would like to thank the Government of Myanmar for its hospitality and the cooperation he received during his first mission to the country. This visit was mainly aimed at establishing working relations with the authorities, to meet with civil society and also with those who do not enjoy their fundamental rights. The programme of the visit is annexed to the report.

The present report is submitted pursuant to General Assembly resolution 62/222. The first part focuses on the activities and programme of work of the Special Rapporteur.

The second part of the report concentrates on substantive issues and elaborates on those related to the protection of human rights in the context of the new Constitution; and the question of participation in the democratic process and organization of the 2010 elections; the right to assembly and right to freedom of opinion and expression and their formulation in the new Constitution; and the question of international humanitarian law and protection of civilians, as well as the situation of specific groups such as ethnic groups, women and children. The Special Rapporteur further elaborates on the mechanisms in place to ensure maximum protection in the context of natural disaster cyclone Nargis, and the living conditions, sustenance and its human rights implications. Finally, the Special Rapporteur discusses developments that have taken place in international cooperation and that relate to human rights issues pertinent to his mandate and the environment for a strengthened cooperation on the promotion and protection of human rights in the country. In his recommendations, the Special Rapporteur includes four core human rights elements for paving the road to democracy in Myanmar.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established in 1992 by the Commission on Human Rights resolution 1992/58. In March 2008, by its resolution 7/32, the Human Rights Council extended the mandate for one year. On 26 March 2008, Tomás Ojea Quintana (Argentina) was appointed as the new Special Rapporteur and he officially assumed the function on 1 May 2008. The present report is submitted in accordance with General Assembly resolution 62/222.

2. Upon assuming the mandate, the Special Rapporteur established contact with the Government of Myanmar through its Permanent Mission at Geneva. In a letter of 6 May 2008, he presented his sympathy to the Government and people of Myanmar regarding the disaster caused by cyclone Nargis.

3. On 3 July 2008, the Special Rapporteur wrote again to the Permanent Representative to announce his intention to conduct a visit to Myanmar from 3 to 13 August 2008. He enclosed the official terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights (E/CN.4/1998/45, appendix V dated 20 November 1997) as applicable to his visit. In addition to the capital city Naypyitaw, the Special Rapporteur expressed his intention to visit Mandalay, Kayin State, Rakhine State and Yangon. In his communication, the Special Rapporteur requested that the Government facilitate the organization of meetings with Government officials; representatives from the political parties and ethnic groups; representatives of the civil society organizations both national and international working in the country; religious groups; and the United Nations country team and the diplomatic community in the country. He also mentioned his intention to visit prisons and to meet in private with a number of prisoners of conscience.

4. On 9 July 2008 the Special Rapporteur received a letter from the Permanent Mission of Myanmar at Geneva inviting him to visit the country from 3 to 7 August 2008. The Special Rapporteur would like to thank the Government of Myanmar for its hospitality and the cooperation he received during his first mission to the country. This visit was mainly aimed at establishing working relations with the authorities, to meet with civil society and also with those who do not enjoy their fundamental rights. The programme of the visit is annexed to the report.

5. Building on the information from his first report to the Council and the findings of his first visit to Myanmar, the present report focuses on the main human rights issues, taking into consideration the main areas of concern expressed by the General Assembly in its resolution 62/222.

6. Finally, the Special Rapporteur would like to extend his sincere thanks to the Office of the United Nations High Commissioner for Human Rights, in particular at Geneva, Bangkok and New York, for assisting him in discharging his mandate.

II. Activities and programme of work of the Special Rapporteur

7. The Special Rapporteur presented his first report (A/HRC/8/12) to the Human Rights Council in June 2008. While in Geneva, he met with representatives of the

Permanent Mission of the Union of Myanmar to the United Nations and held consultations with representatives of Member States, officials of United Nations agencies, representatives of civil society organizations and members of the academic community.

8. The Special Rapporteur flagged to the Council that, in discharging his mandate, he would like to cooperate with and assist the Government of Myanmar in its efforts to promote and protect the human rights of the people of Myanmar. The Special Rapporteur said that he would highlight shortcomings with a view to assisting the authorities to remedy them.

9. The Special Rapporteur sees as the primary objective of his mandate as ensuring effective ways to engage with the authorities to assist the latter in achieving improvements in the protection and promotion of the human rights of the people of Myanmar. This can be done through technical advice and guidance for the establishment of policies, legislation, institutions and structures concerning the protection of human rights in the country.

10. One of the main requirements for achieving this objective is the carrying out of regular visits to Myanmar and frank dialogue with the authorities and civil society.

11. The Special Rapporteur considers his first visit to Myanmar to have been fruitful, since the objective was to establish positive working relations with the authorities, meet with civil society and also with those who do not enjoy their fundamental rights and/or are victims of human rights violations. The Special Rapporteur visited areas affected by cyclone Nargis and took note of the progress made in the reconstruction phase; his visit to Kayin State was cancelled, owing to bad weather conditions. The Special Rapporteur had two constructive meetings with the Government's Human Rights Group, during which it was agreed that the Special Rapporteur would present four core human rights elements that were indispensable for paving the road to democracy. The four core human rights elements are also reflected as recommendations in the present report.

12. The Special Rapporteur would like to highlight the fact that Myanmar is going through a unique moment in its political history. If elections in 2010 are prepared and conducted in an atmosphere in which human rights are fully respected, the process will be credible, resulting in progressive achievement of democratic values. In this regard, the Special Rapporteur requests the full cooperation of the Human Rights Council, as well as the good offices of the Association of Southeast Asian Nations (ASEAN) and other relevant neighbouring countries of Myanmar, to support him in discharging his mandate, and to assist the Government of Myanmar to ensure that the completion of the seven-step road map will be meaningful, will respect human rights, and will entrench democratic values for the country and the people of Myanmar.

13. The Special Rapporteur will continue his regular contacts with the Permanent Mission of Myanmar to the United Nations Office at Geneva and in New York. He will share his findings with the United Nations High Commissioner for Human Rights and the Office of the Secretary-General.

III. Human rights issues

14. Myanmar is party to only two of the core international human rights instruments, namely, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

15. However, as a Member State of the United Nations, Myanmar is bound by the provisions of the Universal Declaration of Human Rights and the Government has the obligation to ensure full enjoyment for the people of Myanmar of those rights proclaimed therein. These are fundamental rights, innate to every human being, regardless of one's origin, whether from East, West, South or North. This was why the United Nations General Assembly, a melting pot of all cultures and backgrounds, adopted the Universal Declaration on 10 December 1948.

16. Important developments since the last report to the General Assembly include the finalization of the new Constitution in February 2008 and its adoption through a referendum in May.

17. The next step in the road map for national reconciliation and democratic transition is the election in 2010. As stated in the Universal Declaration of Human Rights, the will of the people shall be the basis of the authority of the Government. The right to freedom of peaceful assembly and association, as well as the right to freedom of opinion and expression, are fundamental rights to be respected in the process towards the establishment of a solid and reliable democracy. However, full enjoyment of those rights remains outstanding in Myanmar, according to reliable reports on the extension of detentions and/or new arrests of political activists.

18. Another important development concerns the protection of human rights and humanitarian assistance during natural disasters. The devastating cyclone Nargis, which struck Myanmar on 2 and 3 May 2008, made landfall in the Ayeyarwady Division. Some 84,537 persons were reported killed, and 53,836 disappeared. A total of 2.4 million people were reportedly affected by this natural disaster. The Government bears main responsibility for addressing the human rights challenges posed by the disaster; this includes cooperation with the international community.

19. Protection of civilians during armed conflict also requires in-depth consideration and respect for international humanitarian law has to be imperative for all parties involved in the conflict. Ethnic minorities must enjoy human rights without discrimination.

A. Human rights in the new Constitution and the full enjoyment of fundamental freedoms

20. On 19 February 2008, the Government announced that the draft Constitution had been finalized and on 9 April, it was announced that a referendum on the adoption of the new Constitution had been scheduled for 10 May 2008. General elections are scheduled to be held in 2010.

21. Notwithstanding the recent cyclone, the Government proceeded with the referendum, as had been announced by the commission responsible for holding it, in its statement 8/2008. On 10 May, the referendum was held in all states and divisions, except for 40 towns in Yangon Division and 7 towns in Irrawady Division that had been hit by cyclone Nargis. In those 47 towns, the referendum was held on

24 May. The head of the Commission for holding the Referendum, Aung Toe, announced that the draft Constitution had been overwhelmingly approved by 92.4 per cent of the 22 million eligible voters, pointing out that there had been a turnout of more than 99 per cent.

22. The National League for Democracy (NLD) publicly dismissed the national referendum on the adoption of the draft Constitution stating that the process had not been inclusive and on 17 May, it rejected the Government's claim that more than 92 per cent of voters had approved the draft Constitution in the first round of the referendum.

23. The Special Rapporteur has received allegations of irregularities surrounding the holding of the referendum. Those included, inter alia, the distribution of advance ballots, intimidation of villagers to secure a "yes" vote, issuance of a temporary registration card in Rakhine state, solely for participation in the referendum, permitting heads of family to vote for the whole family, employees in factories and other enterprises asked to vote in favour, and victims in cyclone-affected areas being incited to vote in favour by distributing aid to them. It was also brought to the attention of the Special Rapporteur that, rather than each polling office announcing its results, the Commission for Holding the Referendum was the only body tasked with the announcement of results and that was done at the national level.

24. During his mission, the Special Rapporteur was informed by the Commission for Holding Referendum that free campaigning either in favour or against the approval of the new State Constitution was not permitted. The Special Rapporteur asked about the possibility of the Government issuing a comprehensive report on how the referendum had been held, as recommended in his report to the Human Rights Council, and the response was that all information concerning the referendum had already been released.

25. The prospect of the country becoming a democratic State will depend on each of the remaining steps of the road map being conducted in a democratic and inclusive manner. The Special Rapporteur recommends to the Government of Myanmar four core human rights elements that are indispensable for paving the road to democracy, to be implemented before the elections of 2010.

26. During his meeting with the National Convention, the Special Rapporteur discussed the provisions of the new Constitution guaranteeing fundamental rights for the people of Myanmar, including chapter I on "State Fundamental Principles" and chapter VIII on "Citizenship, Fundamental Rights and Duties of Citizens".

27. However, the Special Rapporteur notes with concern that a number of existing domestic laws do not comply with those constitutional provisions. In that regard, he recommends to the Government that it initiate the revision of laws to ensure compliance with the constitutional provisions and international human rights standards.

28. The Special Rapporteur would like to stress that, according to the international obligations of Myanmar, exception clauses in the new Constitution which may limit the enjoyment of human rights for reasons of State security, public order, prevalence of law, community peace, morality or any other reason, shall (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation which does not follow these requirements and jeopardizes the

essence of the right with vague, broad and/or sweeping formulas, would contravene the principles of legality and international human rights law.

29. At his meeting with the National Convention, the Special Rapporteur was told that an English translation of the new Constitution was under preparation, and that it would be available very soon.

B. Participation in the democratic process: the road to the 2010 elections and the situation of prisoners of conscience

30. Articles 19, 20 and 21 of the Universal Declaration of Human Rights provide for freedom of opinion and expression, of peaceful assembly and association and the right to take part in the government.

31. In January 2007, the Government of Myanmar announced that it had decided to release more than 40 prisoners of conscience. However, in the meantime, the Special Rapporteur received reports of new arrests of political and civil rights activists. As of 10 August 2008, and according to reliable sources, some 2,000 political and civil activists were in detention in Myanmar.

32. The provision included in the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar No. 1/2008 and the existing provisions in the State Law and Order Restoration Council Law No. 5/96 have called into question the openness of the environment in which the referendum was held, given the fact that any opposition to the referendum was expressly proscribed. In the new path towards the elections scheduled for 2010, a number of legal reforms are required for a genuine democratic election. This will include lessons learned from the referendum process, such as effective ways to guarantee, among other rights, the full respect for the anonymity of voters, free campaigning by candidates and free access by voters to information.

33. In this context, the situation of the General Secretary of NLD, Aung San Suu Kyi, and in particular her house arrest, are issues of particular concern. According to Opinion No. 2/2007 of the Working Group on Arbitrary Detention, the Government argued that Aung San Suu Kyi had been arrested because, in 2003, during her political activism in numerous towns, she had committed acts against peace and order of local communities, had made speeches against the Government and had campaigned with the intention of weakening the integrity of Myanmar and the solidarity of ethnic communities. The Government had applied the 1975 State Protection Act. On 25 May 2007, the Government extended Aung San Suu Kyi's arrest for another year, reaching the five-year limit provided for by law. In May 2008, the Government of Myanmar exceeded the limit by again extending Aung San Suu Kyi's arrest with no new evidence or allegations against her, and with no legal basis whatsoever. A new petition to the Working Group on Arbitrary Detention has been submitted.

34. In his meetings with the relevant authorities, the Special Rapporteur reiterated the right to legal counsel and the State's obligation to provide the suspect with one and to guarantee access to the legal counsel. He notes with satisfaction that thereafter, Aung San Suu Kyi met with her lawyer after five years, and he expects that she will meet with her lawyer on a regular basis and as often as deemed necessary by either party. According to reports, and as of 3 September 2008, Aung

San Suu Kyi and her lawyer had met three times to discuss a lawsuit against her continuing detention. The Special Rapporteur hopes that, if such a case is filed, it would be examined in a transparent and impartial manner, as is expected from any independent judiciary. The Special Rapporteur informed the Human Rights Council in June 2008 that Aung San Suu Kyi's detention was in contravention of articles 9, 10 and 19 of the Universal Declaration on Human Rights, according to which no one shall be subjected to arbitrary arrest or detention; everyone is entitled to a fair and public hearing by an independent and impartial tribunal; and everyone has the right to freedom of opinion and expression.

35. During his mission, the Special Rapporteur met with U Win Tin, the longest-serving prisoner of conscience in Myanmar, who has spent 19 years in prison. He had had a hernia operation in January 2008, and suffers from heart problems. He has been sentenced three times, to a total of 21 years' imprisonment. U Win Tin was sentenced in 1995 to an additional ten years for writing to the United Nations about prison conditions.

36. The Special Rapporteur also met with U Gambira, co-founder and spokesperson for the All Burma Monks Alliance, which was instrumental in getting monks onto the streets during the so-called "Saffron Revolution" phase of protests in September 2007. U Gambira was arrested on 4 November 2007 in Singaing township in Mandalay division. He was wearing a blue shirt and pair of pants, as, upon his arrest he had been disrobed by the authorities. The Special Rapporteur has been informed that, since his visit, U Gambira has been charged with ten different violations of laws, including violations of article 505 (A) and (B) of the State Offence Act, article 13/1 of the Illegal Border Crossing Act, article 17 (1) of the Unlawful Association Act and article 5 (j) of the Emergency Protection Act, article 303 A of the Electronic Act and article 6 of the Organization Act for inciting a riot, causing public alarm, bringing the Sasana (Buddhism) into disrepute and violating the press law. At the time of finalization of the present report, the Special Rapporteur was informed that, on 4 September 2008, U Gambira was brought before the court. His lawyers, who had filed a petition on his behalf to allow him to wear his robe in prison, were not allowed entry to the courtroom to present and defend the case. This is in breach of section 340 of the Criminal Procedure Code, and of section 40 of the Prison Act providing for access to a lawyer.

37. The Special Rapporteur also met Thurein Aung and Kyaw Kyaw, who were arrested at the American Centre on Labour Day on 1 May 2007. He also met with Su Su Nway, an NLD member who was arrested on 13 November 2007.

38. The Special Rapporteur was informed that a number of political and civil activists were arrested on 8 August 2008, including Myint Aye, leader of the Human Rights Defenders and Promoters Group, who, at the time of writing of the present report, was in incommunicado detention. Myint Aye had been subject to previous arrests in the past. The Special Rapporteur reiterates his call for freedom of expression and opinion, and regrets the arrests of human rights defenders.

39. On 4 June 2008, the Special Rapporteur was informed of the arrest of Mr. Zarganar, a famous comedian in Myanmar, who had been leading some of the relief efforts after cyclone Nargis. According to information received, some seven police, led by the Yangon Western District police chief and the local council chairman, went to Mr. Zarganar's house just before 8 p.m. on 4 June, searched his house and took him away. In his meeting with the Chief of Police, the Special

Rapporteur enquired about Mr. Zarganar and was told that he was being detained at Insein prison, and had been taken to court on 30 July 2008. He had been taken to court a second time on 7 August 2008 and had been charged with eight alleged offences under the Emergency Provisions Act, section 5 (j) and section 17 (a).

40. On 19 June 2008 a number of NLD members were reportedly arrested in Yangon while releasing sparrows and doves to mark the 63rd birthday of Aung San Suu Kyi.

41. The Special Rapporteur regrets that the majority of prisoners of conscience are detained permanently in solitary confinement, which is against international human rights law, and may also be considered in breach of the new State Constitution, which establishes in article 44, that "there is no right to prescribe punishments that violate human dignity". He also regrets the ongoing practice of charging political and civil activists with unrelated alleged offences as a pretext for their detention.

42. The Special Rapporteur takes note of the fact that the majority of prisoners rely on food and medicine delivered by their families. In this regard, the Special Rapporteur has received allegations that prisoners are intentionally transferred to prisons far from their hometowns, in order to make it difficult, or in some cases impossible, for families to ensure regular and frequent visits to their imprisoned relatives. The Special Rapporteur has also received reports that in some prisons, inmates are denied adequate medical treatment and that Thet Win Aung, a student leader, died in prison due to lack of treatment for malaria. Reports of prisoners having been sent to hard labour camps have also been received.

43. It is also reported that U Ne Win, the 60-year-old NLD secretary, who was arrested on 27 September 2007, suffers from hypertension and heart problems. However, he does not receive any proper medical treatment, and has to rely on medicine provided by his family. On 28 September 2007, he was sentenced to two years' imprisonment with hard labour. Reportedly, he has not been given access to a lawyer, and is currently in Myitkyina prison.

44. The Special Rapporteur has also received reports about U Khun Htun Oo, the 64-year-old Chairman of the Shan Nationalities League for Democracy (SNLD), which gained 23 seats in the 1990 elections. It is reported that, on 7 February 2005, he attended a private meeting of senior political representatives. Soon after, he was arrested and sentenced in November 2005 to 93 years' imprisonment. He was transferred to Puta-O Prison in Kachin State, far from his home and family, where conditions are said to be very harsh. Reports are that he is suffering from prostate problems, diabetes, gout and high blood pressure, and that he is being denied outside medical assistance.

45. The continuing detention of political leaders such as U Win Tin and Hkun Htun Oo puts in great jeopardy the participatory aims of the democratic process as expressed by the Government in its seven-step road map to democracy.

46. With respect to the situation of monks in detention who have been disrobed by the authorities, the Special Rapporteur stresses that, together with article 18 of the Universal Declaration of Human Rights, this practice contravenes article 34 of the new State Constitution, which recognizes the right freely to profess and practice religion, and it is even in contradiction of article 361, which recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the State.

47. The Special Rapporteur has received numerous allegations that proceedings against prisoners of conscience do not respect basic guarantees, such as the effective exercise of the right to counsel, and that courts lack independence and impartiality. In this regard, he was informed that on 2 September 2008, 7 women and 28 men, leaders of the "88 Generation" students' group, were brought to a court in Insein prison. The judge ordered the continuation of their detention and their appearance the following week before the same court. All of them are said to face multiple alleged charges. It is also reported that none of them was allowed to meet with their lawyers.

48. The Special Rapporteur would like to reiterate his call to the authorities to re-engage with the International Committee of the Red Cross and provide free access to the detention centres, in accordance with its mandate.

49. He welcomes the moratorium on the use of the death penalty. According to information received, to date, some 500 prisoners are sentenced to death, but no execution has been carried out since 1998.

C. Freedom of opinion and expression, the crackdown on the September 2007 demonstrations and its implications for free elections in 2010

50. In his mission report (A/HRC/6/14), the former Special Rapporteur concluded that, during the repression of peaceful demonstrations from 26 to 29 September 2007, the security forces, including the army and the riot police, as well as members of the Union Solidarity and Development Association and the Swan Ah Shin militia, had used excessive force against civilians, including unnecessary and disproportionate lethal force. Following the reprisal, the former Special Rapporteur had received reports alleging killings, severe beatings, arrests, torture and deaths in custody. It was noted that there were solid grounds to believe that at least 31 persons had died, and that some 3,000 to 4,000 people had been arrested as a result of the crackdown on the demonstrations of September and October.

51. The Special Rapporteur has sent 74 cases of enforced disappearance to the Government requesting information on their whereabouts. According to the information brought to the attention of the Special Rapporteur, as of July 2008, there were 700 individuals still detained in relation to the events of September and October 2007.

52. Accountability for these violations of human rights is still pending. The Government of Myanmar established an "Investigation Body", chaired by the Minister for Home Affairs, to investigate the deaths, arrests and disappearances in connection with the crackdown of September (A/HRC/7/G/8). However, no identification and sanction of the personnel responsible has yet occurred. Under articles 8 and 10 of the Universal Declaration of Human Rights and international human rights law, the Government has the duty to investigate the facts effectively, promptly, thoroughly and impartially, and where appropriate, to take action against those allegedly responsible. The Government must also provide victims with access to justice and effective remedies, including reparation.

53. The Special Rapporteur has no information regarding the intervention of an independent and impartial court in the investigation of the abuses. However, he

continues to receive information about prisoners being charged by district courts for their participation in the events.

54. Without due accountability, drastic events such as those of September 2007 may occur again. Not only does this put at stake the rights to life, personal integrity and liberty, but it also demonstrates the vulnerability of the freedom of opinion, expression and peaceful assembly.

D. International humanitarian law, the protection of civilians and ethnic minorities

55. In paragraph 2 (d), of its resolution 62/222, the General Assembly expressed grave concern at the discrimination and violations suffered by persons belonging to ethnic nationalities of Myanmar, particularly in border and conflict areas, and attacks by military forces and non-State armed groups on villages in Karen State and other ethnic states in Myanmar, leading to extensive forced displacements and serious violations and other abuses of the human rights of the affected populations.

56. In this context, the General Assembly in paragraphs 4 (f) and (h), respectively, of resolution 62/222, strongly calls upon the Government of Myanmar to ensure immediately safe and unhindered access to all parts of Myanmar, including conflict and border areas, for United Nations, international humanitarian organizations and their partners and to cooperate fully with those organizations in order to ensure that humanitarian assistance is delivered to all persons in need throughout the country, and to take urgent measures to put an end to the military operations targeting civilians in the ethnic areas, and to the associated violations of human rights and humanitarian law directed against persons belonging to ethnic nationalities, to end the systematic forced displacement of large numbers of persons and other causes of refugee flows to neighbouring countries and to respect existing ceasefire agreements.

57. The Special Rapporteur's visit to Kayin State was cancelled, owing to bad weather conditions. However, he met with a number of civilians who had travelled to Thailand in April 2008. Their villages had been burnt down during military offensives and they had lost their houses and livelihoods and had therefore been forced to flee to Thailand for survival. He also met with a 13-year-old boy who explained that he had lived in Laki village in Thandaung, an hour's walk from the insurgents' base. The village had been attacked in September 2007 and landmines had been laid all around. He had fled with his family to the forest. On 17 November 2007, while he was cutting wood, a mine had exploded in his face and he had lost both eyes.

58. The Special Rapporteur has received information concerning a large number of internally displaced persons in northern Kayin State. Allegations about civilians being forcibly used by the military as porters have also been received. As at July 2008 and according to the Office of the United Nations High Commissioner for Refugees estimations, which include registered camp residents and officially registered Provincial Admission Board applicants, the population of refugees from Myanmar in Thailand was estimated at 131,000.

59. Myanmar is State party to the four Geneva Conventions, which provide, in common article 3, for the protection of civilian population during armed conflicts

not of an international character. These international instruments — recalled also by article 2.2.j of the ASEAN Charter which Myanmar has ratified — together with customary international law and the Universal Declaration of Human Rights, shall be the guidance for military operations in the field.

60. The Special Rapporteur expresses his concern regarding violence against unarmed civilians by the Myanmar army or non-State armed groups, and calls for the ratification of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, and the implementation of measures to assist civilian victims.

61. The Special Rapporteur is also concerned about the situation of a Muslim community in the border area of Northern Rakhine State, which, according to information received, has been arbitrarily deprived of citizenship for many years, in contravention of article 15 of the Universal Declaration of Human Rights.

62. In addition, in that region of the country, which is located on the Myanmar-Bangladesh border, several factors have affected the availability of food, as well as opportunities for households to make up for the shortage. In 2007, weather conditions resulted in a low yield and families that had sold their harvest in advance, at the lower rates of that time, were later forced to buy their own subsistence rice at higher prices. As cyclone Sidr (2007) had destroyed crops both in coastal areas of Myanmar and throughout Bangladesh, families in Myanmar were not able to purchase rice at reduced rates from Bangladesh in order to supplement their own reserves for 2008, as they had done in previous years. At the same time, there are continuing demands on the population by the military for contributions to cyclone Nargis victims. Contributions include cash, paddy (including improved seed), buffaloes and cattle. Furthermore, there are serious travel restrictions in breach of article 13 of the Universal Declaration of Human Rights, which have eliminated conventional means of securing food and income, such as gathering forest products and seeking wage labour.

63. The principle of non-discrimination is enshrined in the main international instruments, such as the Charter of the United Nations (Articles 1.3 and 55), and the Universal Declaration of Human Rights (article 2), and it is contained in all human rights treaties, included the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, to which Myanmar is a State party. It is also contained in the ASEAN Charter (article 2.2 (l)), which Myanmar has ratified. All ethnic minorities, particularly the most vulnerable, shall enjoy human rights without discrimination, and progressive measures should be taken in order to improve the current conditions.

E. Human rights protection and humanitarian assistance in natural disasters

64. Tropical cyclone Nargis struck Myanmar on 2 and 3 May 2008, causing devastation in Ayeyarwady Division and directly hitting the country's largest city, Yangon. As of 24 June 2008, the official death toll was estimated at 84,537. Some 53,836 people were still reported missing.

65. The establishment of the "Tripartite Core Group" bringing together ASEAN, the Government and the United Nations has led to be an effective forum for

discussion and decisions on operational issues to address problems in an effective and prompt manner. The Special Rapporteur welcomes this initiative.

66. He met with the Tripartite Core Group and was briefed on recovery efforts. He was also briefed on activities such as finding permanent solutions for orphans, mainly ensuring as much as possible that they live with relatives and that they are granted scholarships to go back to school. The Group mentioned that there were no reports of forced labour related to cyclone Nargis and that it was very difficult to verify reports of the involuntary return of internally displaced persons. It was mentioned, however, that "land rights" could become problematic. This includes returnees whose property may have been occupied by others, victims' families who want to claim their heritage and also those who lost their property titles during the cyclone. The Group also stressed that speculations regarding the second death wave resulting from the outbreak of infections and diseases in the aftermath of cyclone, were not borne out and that no such outbreaks had been reported by the medical teams from the neighbouring countries actively working in the affected areas.

67. The Special Rapporteur travelled to Labutta in Ayeyawady Division and visited the villages of Kyaukkalat, Khongyi, Pyinsalu and Kyatshar. He met with displaced persons in temporary shelters and visited a school. He had emotional discussions with the survivors of the disastrous cyclone, some of whom had lost their entire family. He took note of the implementation of reconstruction projects.

68. The protection of women and children cluster is co-led by the United Nations Children's Fund (UNICEF) and the international non-governmental organization Save the Children. Such a co-leadership arrangement (which is also in place for the health and education clusters) is unique and has strengthened the engagement of partners in those clusters. Moreover, the joint work of two cluster leaders with different and extensive knowledge in the subject of protection has proved to be mutually reinforcing. The main task is of coordinating among cluster members for the provision of immediate care and protection to children and women in areas affected by the cyclone (Ayeyarwady and Yangon Divisions), and to ensure that common standards and coordinated structures are in place which can promote the full coverage of affected populations.

69. Specific objectives of this cluster are the promotion of family unity and, where possible, prevention of separations; reunification of separated children with their parents or extended family; ensuring adequate care for separated, orphaned and other vulnerable children; ensuring adequate and appropriate care for vulnerable women, including unaccompanied/separated women, female heads of households, pregnant and nursing mothers, injured women, women with disabilities, traumatized, elderly and women living with HIV; promotion of psychosocial well-being of women and children; establishment of safe environments for women and children and mainstreaming the protection of children and women through all clusters.

70. The situation in the country has reportedly fuelled further displacement to neighbouring Thailand. Since the cyclone, some 200 new arrivals have been reported in Tak province.

71. A number of allegations related to forced relocations have been received. Concerns have been raised with regard to the situation of land property of both those who fled the affected areas and those who regrettably died during the cyclone.

Mechanisms should be put in place to address their claims and to protect their rights.

72. In the immediate aftermath of the disaster, many people found themselves displaced. These internally displaced persons face a number of challenges that further increase the vulnerability of their fundamental rights. For this reason, in addition to addressing their immediate needs with regard to their safety, efforts should be focused on access to food and shelter and to the protection of specific fundamental human rights. Issues such as equal access to assistance, the protection against gender and sexual violence; forced military recruitment or forced labour; the reproduction of lost documentation and the challenges people may face upon their return should be prioritized.

F. Living conditions, sustenance and its human rights implications

73. Disasters such as cyclone Nargis can have a devastating effect on survivors who are already suffering from malnutrition. According to information published by UNICEF in its *State of the World's Children 2008*, the malnutrition rate for children in the country is 32 per cent. Organizations such as the World Food Programme were already distributing food to vulnerable groups in Myanmar, including children, pregnant and lactating women, and people with HIV/AIDS and tuberculosis, as part of its relief programme before the cyclone struck the country.

74. According to the information brought to the attention of the Special Rapporteur, adequate access to food remains a challenge in Myanmar. Insufficient nutritious food, poor access to health facilities, inadequate water and sanitation facilities, and limited livelihood opportunities exacerbate the food security situation and jeopardize the full enjoyment of human rights for large portions of the population in the country.

75. The Special Rapporteur continues to receive allegations of arbitrary land confiscation throughout the country, inter alia, confiscation by the authorities of thousands of acres of privately owned farmland in Bogalay in circumstances where farmers had already bought farming equipment and seeds on credit from the Government. The farmers' and landworkers' work and life conditions continue to be precarious.

76. During his meeting with Myanmar Maternal and Child Welfare Association, the Special Rapporteur took note of the Association's engagement in addressing major shortcomings in the realization of economic, social and cultural rights of the people of Myanmar.

IV. Developing cooperation in the context of human rights

77. The country has gone through important changes over the past year and still continues to face complex challenges. The promotion and protection of human rights in the country continue to be among the main challenges ahead. In this context, the traditional concept of the indivisibility and interdependence of civil, cultural, economic, political and social rights is particularly relevant. The transition from a military authority to a civil democratic Government requires a number of structural changes leading to ensuring the involvement of all the sectors of

Myanmar society in the political transition. Moreover, the situation in the areas inhabited by the ethnic minorities would require stabilization and solid peacebuilding. The Special Rapporteur intends to request visits to these areas one at a time, to get a better idea of the reality on the ground and not depend only on reports, which he regularly receives.

78. The Special Rapporteur notes with satisfaction the recent cooperation between ASEAN, the United Nations and the Government of Myanmar in addressing the aftermath of cyclone Nargis.

79. The progressive ratification of the ASEAN Charter, which the Government of Myanmar has already fulfilled, is also a motive of satisfaction. The Charter includes respect and protection of human rights provisions (Preamble and articles 1.7, 2.2(l)), and provides for the establishment of regional human rights body (article 14).

80. The Special Rapporteur notes that the supplementary understanding between the International Labour Organization (ILO) and the Government of Myanmar, reported on in 2007, which provides a mechanism to enable victims of forced labour to seek redress, was extended in February 2008 for a further 12-month trial period. As of 1 July 2008, some 16 months after the establishment of the mechanism, the liaison officer had received a total of 100 complaints, of which 52 have been formally submitted to the Government for its investigation and action. The Special Rapporteur notes that 33 of those cases have been investigated and subsequently closed. There is still a low level of citizens' awareness of this mechanism, which gives them the right to complain. Incidences of reprisals against a number of complainants or those who support others in exercising their rights have been reported and need to be addressed. The Special Rapporteur strongly encourages the Government of Myanmar to maintain its collaboration with the ILO liaison officer with a view to further strengthening the effectiveness of the mechanism.

81. In this regard, it has to be said that article 359 of the new Constitution prohibits any form of forced labour, except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the State in accord with the law in the interest of the people.

82. The Special Rapporteur encourages the donor community to give the United Nations and financial institutions the mandate to strengthen the capacity of State institutions in carrying out the United Nations objectives, including the promotion and protection of human rights.

V. Conclusion

83. **The possibility to visit Myanmar and establish working relations with relevant authorities is very useful for the Special Rapporteur in discharging his mandate. He has a clearer picture of the needs of the country, as well as his interlocutors, whom he thanks again for their hospitality. The Special Rapporteur assessed the great need for human rights capacity-building of States institutions, but also the great potential for such capacity-building, since most of his interlocutors were well educated, ready to learn and apply international human rights standards.**

84. **As reflected in the present report, improvement of human rights in Myanmar is still a challenging task, but the Special Rapporteur refuses to carry**

out his mandate by criticizing and not cooperating. On the contrary, the Special Rapporteur opts for the challenging course of action, which includes engagement and cooperation with the authorities and assisting them to achieve their ultimate goal of restoring democracy and ensuring respect for human rights. This will take time, but it is worth trying, rather than condemning. If, after some time, there is no sign of any results in the horizon, then the Special Rapporteur may decide to change his strategy.

85. International community should remember that the ultimate beneficiaries are the people of Myanmar and that every international decision and action will ultimately affect the population. Therefore, the Special Rapporteur appeals to the international community, Member States of the General Assembly, to provide him with all the necessary means to discharge his mandate in a meaningful manner to assist the Government of Myanmar to improve the situation of human rights of the people in Myanmar.

VI. Recommendations

86. The Government of Myanmar has established the "seven-step road map to democracy", which includes the drafting of the new Constitution, and the holding of a referendum for its approval. The "road map" will continue with general elections in 2010. Respect for international human rights standards is indispensable in paving the road to democracy.

87. In his meetings with the Human Rights Group, the Special Rapporteur mentioned his intention to propose to the Government four core human rights elements to pave "the road to democracy". The Government should implement progressively the four core human rights elements and complete them before the elections of 2010. During this period, the Special Rapporteur stands ready to provide full assistance to the authorities in achieving the objective of each and every core element.

A. First core human rights element: review of national legislation in accordance with the new Constitution and international obligations

88. During his meeting with the National Convention, the Special Rapporteur was informed that chapters I and VIII of the new Constitution provide for a number of rights, including freedom of expression, freedom of opinion, and freedom of peaceful assembly and association. Articles 19 and 20 of the Universal Declaration of Human Rights also provide for these rights.

89. The National Convention also affirmed that the new Constitution had been approved by 92.4 per cent of voters. Therefore, it is clear that, according to that information, the will of the people of Myanmar was, among other things, to recognize their human rights, which include freedom of expression, opinion, peaceful assembly and association, and to enjoy those rights in the process towards the elections of 2010.

90. In this regard, the Special Rapporteur recommends that the Government of Myanmar start reviewing and amending those domestic laws which limit

these fundamental rights and are in contravention with the new Constitution and with international human rights standards.

91. As concerns the State Constitution, article 198 (d) clearly establishes that national law cannot be in contrast with its provisions. With respect to international law, the Charter of the United Nations (Preamble and Article 1.3), the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the ILO conventions, all these international instruments contain obligations regarding protection of human rights that the Government shall respect (see third statement of the Preamble to the Charter of the United Nations, and article 26 — *pacta sunt servanda* — of the Vienna Convention on the Laws of Treaties). Myanmar, as a United Nations Member State having signed the Charter of the United Nations soon after it gained independence in 1948, must honour its international obligations, and cannot invoke provisions of its domestic law as justification for its failure to comply with them (article 27, Vienna Convention).

92. The Special Rapporteur has identified a number of domestic laws which unreasonable limit human rights provided for in the new Constitution and under international law. Any limitation to the enjoyment of these rights shall (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation which does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulas, would contravene the principle of legality and international human rights law.

93. According to information received, the office of the Attorney General is tasked with analysing legislation. The following is the first set of domestic laws to be reviewed and amended:

- State Protection Act (1975)
- Emergency Provisions Act (1950)
- Printers and Publishers Registration Act (1962)
- Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Opposition (No. 5) (1996)
- Law Relating to Forming of Organizations (1988)
- Television and Video Law (1985)
- Motion Picture Law (1996)
- Computer Science Development Law (1996)
- Unlawful Association Act
- Electronic Communication Law
- Sections 143, 145, 152, 505, 505(b) and 295-A of the Penal Code.

B. Second core human rights element: progressive release of prisoners of conscience

94. As a result of a number of political conflicts and circumstances since 1988, there are more than 2,000 prisoners of conscience detained in different facilities around the country.

95. Prisoner of conscience may be defined as a person who: (a) is charged or has been convicted for the infringement of national legislation which impedes reasonable enjoyment of freedom of expression, opinion, peaceful assembly or association; and (b) does not have access to a court, or is being tried by courts which lack independence and impartiality, and/or due process of law is denied. These two circumstances are against basic human rights recognized in the new Constitution and the Universal Declaration of Human Rights. Therefore, prisoners of conscience are basically individuals whose human rights are being systematically denied.

96. The road to democracy includes the general elections in 2010. The essence of any voting is participation and free and fair election. Without the free participation of prisoners of conscience, the very credibility of the general elections of 2010 would be at stake. Release of prisoners would also bring reduction of tension and inspire political participation. Therefore, progressive release of those prisoners is a core human rights element for paving the road to democracy.

97. Given the fact that fundamental rights, such as liberty and personal integrity, are being affected in detention, the release, although progressive, should start as soon as possible. Release must be without the imposition of any particular condition which may result in new forms of diminishing enjoyment of human rights, such as written statements renouncing to political participation or campaign. On the other hand, parallel to the release, immediate measures should be taken to avoid any cruel treatment, to improve conditions of detention, and to ensure urgent medical treatment.

98. In the past, the Government of Myanmar has issued several amnesty laws or decrees for the release of prisoners of conscience, in order to restore human rights and to seek national reconciliation. Such mechanisms, and others, such as pardons, reduction of sentence or conditional release, can now be implemented. The following particular circumstances of prisoners should be taken into account for progressive release:

(a) Elderly prisoners

(b) Prisoners with health limitations

(c) Prominent members of political organizations, and ethnic leaders

(d) Long-standing prisoners

(e) Members of religious orders

(f) Women who have children

(g) Prisoners transferred to forced labour camps

(h) Prisoners not convicted

(i) **Prisoners without previous criminal records**

(j) **Prisoners held in remote jails from their homes.**

99. **Additional criteria include the release of prisoners connected to specific events, such as those arrested in August 1988, May 2003, September 2007 and May 2008, in connection with the referendum and the aftermath of cyclone Nargis.**

C. Third core human rights element: armed forces

100. **Myanmar has been under military regime for decades, and most Government offices and major ministries have been under military administration. Transition to multiparty democratic and civil government, as planned by the new Constitution, will require an intensive process of incorporating democratic values, especially those contained in international human rights and humanitarian law. Transition will also require capacity-building in a wide range of areas and modern governance training.**

101. **In this regard, the following measures should be adopted vis-à-vis the general elections of 2010 to address the various human rights shortcomings:**

(a) **Repeal discriminatory legislation and avoid discrimination practices, particularly in Northern Rakhine State, where a large part of the Muslim community has been deprived of citizenship and movement for many years;**

(b) **Continue developing efforts to attend the aftermath of cyclone Nargis, and implement similar measures to address other humanitarian emergencies in the country;**

(c) **Ensure enjoyment of economic, social and cultural rights. The Special Rapporteur is ready to be the intermediary between the Government of Myanmar and the relevant international mechanisms, including thematic mandate holders, which can contribute on how to achieve improvement regarding those fundamental rights.**

102. **According to the new Constitution, the Armed Forces, *Tatamadaw*, will play an important role in the new government. In this regard, the *Tatmadaw* should develop a number of measures which will include:**

(a) **Respect for international human rights and humanitarian law in areas affected by armed conflict. This will include ensuring efficient working of health providers in the conflict areas;**

(b) **Continuation of the policy applied to avoid recruitment of child soldiers;**

(c) **Forbidding the use of anti-personnel landmines. In this respect, *Tatamadaw* should promote the ratification of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction;**

(d) **Refraining from detaining individuals for alleged infringement of national laws which are under review according to recommendation No. 1. This measure should also encompass police and prison forces;**

(e) Establishing a permanent and meaningful training programme on human rights for members of the *Tatamadaw*, police and prison forces, with international cooperation.

D. Fourth core human rights element: the judiciary

103. The legal framework in Myanmar purports to function impartially issuing sentences under an apparent rule of law. However, under the current functioning, the judiciary is not independent and is under the direct control of the Government and the military.

104. The new Constitution, if correctly interpreted, provides for due process of law and for an independent and impartial judiciary (article 19). These are fundamental conditions for the enjoyment of human rights in a democratic society, as recognized by the Universal Declaration of Human Rights (articles 8 and 10).

105. The gap that exists between the unacceptable functioning of the legal framework under the current conditions, and the principles established in the new Constitution, shows a compelling necessity for immediate change and improvement in order to respect fundamental human rights. In this regard, the judiciary of the Union of Myanmar should undertake a series of measures which include:

(a) Exercise full independence and impartiality, particularly in cases involving prisoners of conscience;

(b) Guaranteeing due process of law, including public hearings, in trails against prisoners of conscience;

(c) Refraining charging individuals for alleged infringement of national laws which are under review according to recommendation No. 1;

(d) Establishing effective judicial mechanisms to investigate human rights abuses in order to fight impunity;

(e) Seeking international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles. In this respect, the Special Rapporteur suggests that the Supreme Court engage with the Special Rapporteur on the independence of judges and lawyers for assistance in this regard.

Annex I

Programme of the visit: 3-7 August 2008

Sunday, 3 August 2008

18:45	Arrive at Mingaladon Airport
19:00	Proceed to Mya Yeik Nyo Hotel
19:15	Arrive at Mya Yeik Nyo Hotel
19:30	Dinner hosted by Deputy Minister for Home Affairs

Monday, 4 August 2008

07:45	Leave Mya Yeik Nyo Hotel
07:50	Arrive at Myanmar Red Cross Society headquarters
08:00	Meeting with Myanmar Red Cross Society
08:35	Proceed to Myanmar Women's Affairs Federation Office
08:40	Arrive at Myanmar Women's Affairs Federation Office
08:45	Meeting with Myanmar Women's Affairs Federation
09:15	Proceed to State Sangha Mahanayaka Office
09:20	Arrive at State Sangha Mahanayaka Office
09:30	Call on Chief Reverend, State Sangha Mahanayaka
10:30	Proceed to Ministry of Religious Affairs
10:35	Arrive to Ministry of Religious Affairs
10:40	Call on Minister of Religious Affairs
11:40	Meeting with 4 Major Religious Federations of Myanmar
12:40	Proceed to Mya Yeik Nyo Hotel
13:15	Lunch hosted by Chairman of Myanmar Red Cross Society
13:45	Rest
14:00	Leave Mya Yeik Nyo Hotel
14:15	Arrive at Yangon Division Military Common
14:20	Meeting with National Disaster Preparedness Central Committee
15:30	Proceed to Ministry of Foreign Affairs (Old Building)
16:00	Meeting with Tripartite Core Group
17:30	Leave Ministry of Foreign Affairs (Old Building)
18:00	Arrive at Mya Yeik Nyo Hotel
19:00	Dinner hosted by Deputy Minister for Religious Affairs

Tuesday, 5 August 2008

07:00	Leave for Airport
07:30	Travel to Ayeyardwady Division by helicopter to see areas affected by cyclone Nargis
13:00	Arrive back at Yangon Airport
13:15	Proceed to Insein Prison
13:30	Visit Insein Prison and meet with prisoners
16:30	Return to Mya Yeik Nyo Hotel
16:45	Meeting with diplomatic corps
17:30	Meeting with United Nations agencies
19:00	Dinner hosted by Deputy Minister for Foreign Affairs

Wednesday, 6 August 2008 (morning schedule cancelled)

06:00-06:20	Departure from Hotel to Mingaladon International Airport
06:25-07:45	Departure from Mingaladon Airport to Nubu, Thotcoco
07:50-08:50	Meeting with Htein Maung and his group
09:00-09:20	Departure from Thotcoco to Pha-an
09:30-10:00	Meeting with Can Saw Mu Thahe, Phado Aung Sun and Democratic Karen Buddhist Army groups
11:00-12:00	Meeting with the United Nations Resident Coordinator
12:00-13:00	Departure from Pha-an to Mingaladon Airport
13:00-13:30	Departure from Mingaladon Airport to Mya Yeik Nyo Hotel
13:30-16:30	Meeting with Political Parties (National League for Democracy (NLD), National Unity Party (NUP), Phao, individual, U Aye Win group, Wuntharnu NLD groups)
16:30-17:30	Departure to Nay Pyi Taw
17:35-18:00	Departure to Shwe Aeit Thae Hotel
18:00-18:10	Departure to Ministry of Home Affairs
18:15-19:45	Meeting with Myanmar Human Rights Group
19:50-20:00	Departure to Shwe Aeit Thae Hotel
20:00-23:00	Dinner hosted by the Myanmar Human Rights Group

Thursday, 7 August 2008

07:00-07:40	Leave Shwe Aeit Thae Hotel from Ministry of Home Affairs
07:45-08:15	Call on Minister for Home Affairs
08:20-08:25	Leave Ministry of Home Affairs from Ministry of Foreign Affairs

08:30-09:00	Call on Deputy Minister for Foreign Affairs
09:00-09:05	Leave Ministry of Foreign Affairs from Myanmar Police Force Headquarters
09:10-09:45	Meeting with Chief of Myanmar Police Force
09:45-09:50	Leave Myanmar Police Force for Ministry of Electric Power N° (1)
09:50-10:20	Meeting with Union Solidarity and Development Association
10:20-10:25	Leave for Ministry of Labour
10:25-11:00	Call on Minister for Labour
11:00-11:05	Leave Ministry of Labour Office of the Attorney General
11:10-11:45	Meeting with responsible persons from the National Convention
11:45-11:50	Leave the Referendum Holding Commission from Shwe Aiet Thae Hotel
12:45-13:45	Lunch hosted by Director-General of the General Administration Department
13:45-13:50	Proceed to Myanmar Maternal and Child Welfare Association
13:50-14:20	Meeting with Myanmar Maternal and Child Welfare Association
14:20-14:30	Proceed to Ministry of Home Affairs
14:30-15:30	Wrap-up meeting with Deputy Attorney General, Dr. Tun Shin Myanmar Human Rights Group
15:30-15:35	Proceed to Shwe Aeit Thae Hotel
15:35-16:00	Rest and prepare for departure
16:00-16:20	Leave for airport
17:00-18:00	Arrive at Mingaladon Airport
18:15-19:00	Meeting with the diplomatic community/press conference
19:15-19:35	Prepare for departure
19:45	Leave Mingaladon Airport for Bangkok